



THE LAW AND POLITICS OF ASYLUM

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CERTIFICATE

This is to certify that the work entitled "The Law and Politics of Asylum", has been completed by Miss Naghma Farooqui under my supervision.

In my opinion, this dissertation is suitable for submission for the award of the degree of M.Phil. in Political Science.

A handwritten signature in black ink, appearing to read 'Ishtiaq Ahmad', with a stylized flourish at the end.

(PROF. ISHTIAQ AHMAD)

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PREFACE

In modern times where different conflicting ideologies exist, the loyalty of a person is determined by his birth in a particular country. Asylum remains the only ray of hope for a self determining person. It is a unique phenomena of life and world power, that the majority of world population is doomed to a particular political philosophy, not by their own wish but by the virtue of the fact that they happen to be born citizens of a certain country. They cannot possibly disown the ideology of their state while living there. Consequently dissenting citizens have to seek asylum in some other countries if they wish to subscribe to the philosophy of their own conviction. Totalitarian or dictatorial tendencies witnessed in a number of countries discourage opposition to the ruling group. This results in the seeking of asylum by the dissenter in some other country.

Thus, any person who under the stress of force majeure has left his home and become dependent on the hospitality of other state is a asylum. In other words A person who has left the territory of the state of

which they are, or were national and had taken refuge, in a foreign land due to fear of being persecuted in their own state because of their race, religion political belief or activities are asylees.

The practice of asylum is an old phenomena. In older days the individual political refugee had been a familiar figure in history. It was common for a Prince or Pretender worsted in his home country, to find welcome and support alone or with adherents at the court of some neighbouring states. For centuries, Roman empire received innumerable national communities of asylee mainly of Germanic and Turkish Origin. Similar movements went on throughout the middle ages particularly in the countries bordering the great and ever unquiet Europe steppe.

From the sixteen to eighteenth century the commonest type of refugees were the religious refugees who took asylum in the churches. A special and important place in the history of asylum seekers are held by Jews who may be called a nation of refugees. In the late nineteenth and early twentieth century a steady stream of Jewish refugees from actual or threatened persecution in Russia and Rumania poured westward into, England and United States of America.

The situation still recurs and will continue so long as states exist which are anxious to exploit the embarrassment of their neighbour. At present times when politics is based less on dynamic consideration and more on broad social tendencies, it has become common for a state to welcome the victim of social regimes dissimilar to its own.

The present study "The Law and Politics of asylum" contains three chapters, conclusion and appendices. It tries to analyse in depth the refugee right of asylum in a foreign country; laws prevalent among nations treatment of asylees; their rights and duties and above all the complex and controversial issue of granting extraterritorial or diplomatic asylum in embassies, warships, and merchant vessels and asylum to Prisoners of war.

Chapter 1 deals with 'Law of Asylum,' the various kinds, convention and treaties and their effectiveness. Traditionally the law of granting political asylum was accepted as a general principle of international law but modern trend indicates that in, contemporary times states recognise political asylum as a principle of humanitarian character rather than as a legal concept.

undisputed rule of international law is that every states has exclusive control over the individual on its territory. States have supreme power to regulate the admission and expulsion of persons at will, on the basis of principle of territorial sovereignty of state. Right to grant asylum is power of the state asylee can seek but cannot claim asylum.

Thus the popular notion of asylum is usually in the context of political asylum, in which an alien, seeks permission to enter and to remain. The territory of a state because he would face political persecution if he were forced to return to his home. In the absence of an extradition treaty there is, however, no obligation upon a state to return offenders to the state from which they have escaped, and if the individual is in a sense an offender or if his crime is of political nature. The territorial state is under no obligation to surrender at all, the extradition treaty notwithstanding.

Chapter II deals with political asylum seekers, sometimes a large number of people live outside their countries of origin or habitual residence due to poliical instability in their countries and are forced to leave their state. World War II caused the most formidable displacement of population

ever experience. At the outbreak of Hungarian revolution more than 20,000 Hungarian refugees poured over the borders into Austria and Yugoslavia. The change in Hungarian internal situations caused a new wave of clandestine departure over the western frontiers. The first to flee in search of shelter from oppression were mainly politicians and active members of small holders party, soon followed by socialists. There is still small but steady westward flow of escapees from the communist countries of Eastern Europe.

The mass influx of political refugees from Bangladesh to India was witnessed during the Bangladesh Crisis in 1971 between India and Pakistan. Ten million people left East Pakistan (now Bangladesh) took shelter in India due to ill treatment of Bengalis in East Pakistan.

Chapter III analyses reception of aliens, treatment of asylee their rights and duties in the country of asylum. Contemporary international law has made a shift from the notion that states solely and exclusively are the only entities capable of being the subject of law. It now exhibits an inner growing

concern for the individual and his rights. Surely but slowly it has come to recognise that an individual is capable of directly deriving rights and duties under international law and trying to enforce them at international level.

Protection of human rights constitutes the main aim of the United Nation. Since then several conventions have come into force to protect human dignity. Among the various rights which an alien is eligible for is the National treatment to the aliens i.e. no distinction be made between national and alien thus, an alien is guaranteed to practice religion, access to courts including legal assistance. Among the various duties of asylee in the foreign country is not to indulge in anti governmental activities in the foreign state, or in subversive progrpoganda, must respect the national laws of the state and should avoid the hostile activities which could embrasse the country of asylum.

Finally an attempt is made to analyse the various aspects involved in granting asylum to individuals. A state confers only few rights which an asylee can claim in International law. It should be remembered that an asylee has the right to seek and enjoy asylum, but it is the discretionary power

of the state either to grant or refuse asylum. Once asylum is granted, the asylee enjoys the hospitality of the state of Asylum. The state granting asylum may, if necessary, put the asylee under surveillance if his or her activities are against the country from where he has escaped. No hostile expedition against the state from where the asylee has escaped is permitted. However, the Post World War II period has been heralded as an enunciator of recognition of an individual's status in the world community.

CHAPTER - I

LAW OF ASYLUM

CHAPTER - 1

LAW OF ASYLUM

It is a matter of common experience in the political life of nations that certain individuals are forced to escape from their state and seek shelter in foreign countries, this may be due to their political persecution on the ground that they are enemies of the established order in the state. When the political revolutions take place and the rebels who have successfully engineered the revolution try to prosecute those who have opposed them, and if the revolution fails, the govt. against which the revolution was unsuccessfully engineered, will certainly try to punish those who rose up in rebellion. Persons, in such circumstances, are forced to seek asylum in foreign countries. Among such persons are not only political leaders but also sovereigns and their families.

Asylum, says starke involves two elements (a) shelter, which is more than merely temporary refuge; and (b) a degree of active protection on the part of authorities in control of the territory of asylum. The Institute of International law defines asylum as " the

protection which a state grants on its territory or in some of its other place under the control of certain of its organ to a person who comes to seek it" (1)

Asylum connotes three following legal meaning : Grant of admission to refugees in its territory; protection of refugees and lastly the non-extradition of political offenders.

There are two types of asylum.

(a) TERRITOTIAL OR INTERNAL ASYLUM

(b) EXTRA TERRITORIAL ASYLUM or DIPLOMATIC ASYLUM

TERRITORIAL OR INTERNAL ASYLUM :

Territorial asylum is granted by states on its own territory on the basis of the principle of territorial sovereignty. Every state has full freedom to grant asylum to political, Social or religious refugees in its territory. Question of granting territorial asylum arises when a person or group of persons having fled from another country enter the territory of the state and seek permission to remain there. This may happen when individual, in order to escape persecution in their own land on account of

their race, religion, or political beliefs leaves his or her territory and try to find refuge in some other land where they could live and enjoy some of the fundamental freedoms.

Thus a foreign state is provisionally at least, an asylum for every individual who being prosecuted at home crosses its frontiers. In recent years many such instances have arisen, the cases of Jewish refugees who were made to flee from Nazi persecution in Germany on account of their race, the refugees from Hungary and East European states, and the Tibetan refugees who sought their freedom from domination by leaving their homes and taking refuge in other lands including India. Several other refugee situations have arisen such as the case of Palestinian refugees and those from Korea. Angola, Vietnam and Burma, States have generally accepted peoples who are politically persecuted in their own country.

Starke sub-classifies territorial asylum into three following categories :

- (a) 'Political refugees'; eg, for so called political defectors;

- (b) 'Refugee asylum', for refugees with a well founded fear of persecution in their own land country;
- (c) 'General asylum', i.e. for persons who have fled from their own country to seek economic betterment, but do not have the status of immigrants.

Territorial asylum is a normal and recognised institution and well established rule of International law. The principle concerning the grant of asylum under International law is that in the absence of treaty obligation, a state is free to admit any one it likes into its territory and to allow him to remain on there. There is, however, no corresponding right in the refugee to demand that he should be granted asylum by the state whose territory he has entered.

W.E. HALL Says that "a state being at liberty to do what ever it chooses with in its own territory, without reference to the wishes of other state. So long as its acts are not directly injurious to them it has the right of receiving and giving hospitality of asylum to emigrants or refugees, whether or not the former had violated the laws of their country

in leaving it, and whether the latter are accused of political or of ordinary crimes" (2)

Article 14 of Universal Declaration of Human rights approved by General assembly of the United Nation in 1948 provides that "Every one has the right to seek and to enjoy in other countries asylum from persecution".

This article is often quoted in support of the proposition that there is an obligation on a state to grant asylum to political offenders and to receive persecuted aliens into its territory. This however, would not seem to be correct view either in principle or in practice of states. Fugitives have no enforceable right in International Law to enjoy asylum. States have the discretionary power either to grant or refuse asylum. However, constitutions of several countries provide in their Preamble the right of asylum such as the constitution of France; Article 10 of Italian Constitution; Article 31 of the Yugoslav Constitution do indeed, provides for a right of asylum to individuals fleeing from persecution.

The true position is that whilst, it is the rights of the refugee to seek asylum in a state other

than his own, the decision whether or not to grant him asylum is a matter of determination of the state concerned. Thus a state is under no legal duty to refuse admission to a fugitive alien into its territory, or in case where he has been admitted to expel or deliver him up to persecuting State. On the contrary, States have always upheld their option to grant asylum if they have chosen to do so.

It should be noted that the General assembly resolutions are not legally binding, Convention which are rather weak refers to a right to 'seek' asylum but it cannot be easily ignored because nations ignoring such resolutions, may be pushed to diplomatic isolation.

States are competent to grant asylum except in such circumstances where they are obliged to limit that power in the interest of other states. Thus states have entered into treaties and Conventional agreements, that individuals such as common criminals are not entitled to asylum but they should be surrendered to the country of their Origin. States also exercise the power of exclusion, surveillance and expulsion of aliens whose activities cause their states of origin genuine anxiety.

But so far, no Individual right is guranteed by International law, although certain significant treaties have been signed by states such as, Treaty on Political asylum adopted 4th Aug. 1939 signed at Montevideo, among the six latin American Countries. And Declaration on Territorial asylum adopted by United Nations General Assembly on 14th August 1967 (3)

recommended, that in Practices, States should follow a number of standards and desiderata.

- (a) Article 1 of the above convetion provides that, "Asylum granted to persons seeking refuge from persecution should be respected by all states".
- (b) "Where a state finds difficulty in granting or continuing to grant asylum state individually or collectively, or through the United Nations, should shall consider in a spirit of International solidarity, appropriate measures to lighten the burden on that state"(Article 2 'para 2)
- (c) "A person seeking asylum from persecution should not be subject to rejection at the frontier or if he has aready entered the territory in which he seeks asylum, to expulsion or compulsory return. If there are

over riding reason of national security or if it be necessary to safeguard the ~~pop~~ulation as in the case of mass influx, asylum may be refused, but the state concern should consider granting the person seeking refuge an opportunity, by way of provisional asylum or other wise, of going to another state." (Article 3).

The liberty of state to grant asylum, may be cut down by treaties of the state concerned of which extradition treaties, are the commonest illustrations, for instance in principle, asylum ought not to be granted to any person, with respect to whom there are were founded reasons for considering that he had committed a crime against peace, a war crime, or ~~ag~~ainst humanity (4)

Thus the right of granting asylum mainly concerns with the bonafide political refugees, who may have been guilty of actual political offence, or who had been prosecuted on the ground of his political belief, and who in the country of refuge does not abuse the hospitality granted to him by engaging in activities ~~detrimental~~ to his state of Origin. The right of asylum which is closely connected with the

non-extradition of political offenders which is wider in scope as it embraces the victims of persecution fleeing from the country of oppression. Oppenheim explains, "at present it is probable that the so-called right of asylum is nothing but the competence of every state to allow prosecuted alien to enter to, remain on, its territory under its protection, and thereby to grant asylum to him. Such fugitive aliens enjoy hospitality of the state which grants him asylum, but in might be necessary to place him under surveillance or even to interim him at some place in the interest of the state which is seeking to prosecute him". (5)

Practice of states shows that in case of refugees from political persecution, the right of asylum is liberally excercised and even the local immigration laws are not enforced against them in many respects. For example, In Britain and the United States of America, the governments have never been known to close their door to therefugees from Nazi persecution and more recently to those who have fled from European Countries where Communist regimes had taken over.

British practice regarding granting of asylum was declared in Parliament in 1958 : "Application for political asylum are dealt with in the light of the fact of the particular case. The result of refusing admission to a foreigner would be his return to a country in which, on ground of political opinion, race or religion, he would face danger to life or liberty... Thus, he would normally be admitted unless there were positive grounds for considering him undesirable" (6).

Politics took a different turn in the granting of asylum after the second world war when two distinct ideologies, the capitalists and the communist emerged. The practice of asylum then became more melodramatic, the establishment of a wall between East and West Berlin was an effort to end once for all the exodus of hundred of thousands of persons who had fled from soviet zone of Germany to take political refuge in West Germany, Due to prevailing uncertainty about the legal regulation of asylum , which is Governed by customs and thus have no independent states in International Law. (7)

Recently political asylum was granted to Saudi Diplomat who defected to United State of America

alleging, that this government secretary acquired nuclear arms and was engage in human rights abuses. The United States immigration and naturalization services granted asylum on request, as the defector had a well founded fear of being persecuted if return to his home land. (8)

Regarding Indian practice, the refugees from Tibet have been allowed to enter and remain in its territory and seldom has any one been known to have been turned back.

Question of granting of asylum is motivated by number of considerations political as well as humanitarian. For instance a state liberty to grant asylum to refugees may cause political tension between the country of asylum and the country of Origin. Secondly, it may happen large number of refugees may tilt the balance in favour of one community to the prejudice of another, thus states may refuse admission to asylee. Who enter in large number due to war or political instability in their country.

Thirdly, it is desirable on humanitarian ground to allow refugee who had fled from political persecution to remain in the territory of the state they have entered. Economic consideration of the country have to be taken into account, particularly in

smaller nations as the influx of large number of refugees may upset the economy or the economic stability of the country itself.

Above all these considerations, the prime factor in the mind of states is : what would be the fate of man if he is pushed back to the territory from which he had crossed the frontier. The practice of states show that if there is a possibility of a man being sentenced to death or being subject to degrading and cruel punishment, then the state would grant him asylum.

In spite of several conventions and agreements grant of asylum in International law has yet to cope effectively with the mass exodus of refugees in last decades.

In this effort a draft convention on Territorial asylum emerged in United Nations - 1974-75. This draft instrument spelled out with more, precision the principles enunciated in the Declaration on Territorial asylum 1967 and like wise stopped short of conferring an absolute right,. Article 1 of the said convention recognised that "the grant of asylum pertained to the sovereign rights of the states, but

that state parties should use their "best endeavours" in "humanitarian spirit" to grant asylum in their territory to persons eligible under the draft convention, by reason of fear of persecution or punishment for reason set out in Article 2.

However this convention could not reach a consensus on the matter of conferring an absolute right of asylum. Since 1985 United Nations High Commission for refugees has launched the United Nation campaign to break down mounting pressure barriers against the tide of refugees world wide, and to treat asylees as an asset. (9)

ASYLUM TO PRISONERS OF WAR

The right of a state to grant asylum has been recognised as an institution of humanitarian character, several states expressly provide this in their constitution. Persons prosecuted for political reasons are granted asylum by the states. This has become a general principle of law. However it is a matter of controversy whether a state may grant asylum to Prisoners of war detained by it, but unwilling to be repatriated. (10)

During the Korean conflict, 1951-53 a new problem arose when the United Nations Command ascertained by the so-called screening of thousands of prisoners in its custody. Owing to fear of persecution, many were unwilling to be repatriated. After the end of hostilities, those prisoners of war who desired to be repatriated had been restored to forces to which they were the members but still there were around twenty two thousand prisoner of war in the custody of U.N. command and several thousand in the hands of Korean Peoples Army and Chinese people volunteers who wished not to return to their home-land.

"It was affirmed by U.N. in its resolution of 3rd December 1952 that 'Force shall not be used against Prisoners of war to prevent or their return to their homeland.'" the communist divided whole sale repatriation of North Korean and Chinese Prisoners of war to communist territory, their demand was based on Article 118 and 119 of the Geneva Convention 1949 relating to the treatment of Prisoners of war, which provides for the unconditional handing over of prisoners without delay after the end of hostilities. U.N. negotiators objected to forced repatriation of unwilling prisoners to the communist territory and contented that many prisoners on the

communist side came to fight U.N. forces under compulsion and as such, their forced repatriation was against all canons of justice and humanity and that Geneva convention could not contemperate extra-ordinary situation arising out of the conflict of ideology in the Korean crisis". (11)

Thus it was a point of argument whether the detaining power may, if it desired grant asylum to Prisoners of war who do not wished to be repatriated. The problem arose with the repatriation of Chinese and Korean Prisoners of war in accordance with the rights given to them under Geneva prisoners of war convention 1949 . In accordance with the resolution of U.N. General Assembly of 3rd December 1952 a Korean armistice agreement was signed with Comander-in-Chief of U.N. at Panmunjon on 27th July 1953, which dealt with the legal position of prisoners of war in accordance with Geneva prisoners of war convention 1949 .

This armistice agreement settled the fate of Prisoners of war following the Korean war, and it was step forward to the Geneva prisoners of war convention 1949 which gives a due emphasis to the humanitarian treatment of Prisoners of war. It was agreed in the

armistice agreement 1953, that Neutral nation repatriation commission would be formed. Para 2 of the said convention provided "prisoner who had not exercised their right to be repatriated, could be placed in the custody of composed of members appointed by Sweden, Switzerland, Poland, Czechoslovakia and India. The commission was charged with the responsibility of affording the opportunity of repatriation to those prisoners in its custody who signified a desire to return to their own forces.

The states to which Prisoners of war belonged were asked to send these representative to conduct interviews and explanation with a view to explain their rights and informing them of any matter relating to their return to their homeland, and to determine, what disposition should be made of those Prisoners of war who still refused repatriation after 90 day period of explanation and interviews. In this case Neutral Nation Repatriation Commission shall declare to relief the status of Prisoners of war to civil status. Those who have not exercised their right to be repatriated and for whom, no other disposition has been agreed to by the political conference within 120 days after Neutral National Repatriation Commission assumed custody.

"The interpretation of the armistic agreement was stated to rest with the Neutral Nation Repatriation Commission , with contained through out references to the Geneva Prisoners of war convention 1949, the provision of whcih both parties of the Korean conflict had under taken to apply. The task of neutral supervision of the the return of Prisoners of war was full of complexity and delicacy, as the screening of housands of Prisoners of war under the U.N. command could not be ascertained. Owing to fear of persecution many were unwilling to be repatriated . Thus claims of humanity had to be weighed against the danger of being sent back, unscrupulous belligerents affecting to make spurious screening of captives, and the possibility that, under pretext of political objection to repatriation, Prisoners of war might be guilty of treason. The screening task was enormous and there was scene of disorder. Prisoners of war refused to come out from their compound for explanation process. Force could not be used to take then out as such action would be a violation of Geneva Prisoners of war convention 1949 which forbade the use of force or threat of force, against of Prisoners of War.

As a result of delays only small proportion of the prisoners could go through the screening process by the end of the 90 days period which had been prescribed for that purpose under the armistice *agreement*.

The period having ended on 23rd december 1953 the Neutral National Repatriation Commission gave his conclusions that those prisoners who had not excersised their right to repatriation , should be referred to political conference mentioned in paragraph 11 of the armistice agreement (12)

Korean problem which had ideological dimension as regards prioners issue raised a fundamental question of values, right of individual, their relation to the right of state. Thus the Panmunjom, armistice agreement, raised the question of legal applicability, interpretation, and implication of international law in modern times. U.N. command proposals were relied more on morals and humanitarian support rather than a positive legal argument. The screening period had ended on 23rd January 1954. The Chairman Neutral National Repatriation Commission

concluded that only lawful course could be ^{used} to restore the prisoners to the custody of former detaining sides after 120 days of custody. Neutral National Repatriation Commission further declared".... alteration of status of Prisoners of war either by declaration of civilian status or disposition in any other manner requires the implementation of the procedures of explanation and political conference to precede it..,Any unilateral action by any party concerned will not be in conformity with the armistice agreement". (13)

In connection with the question of final disposition of Prisoners another problem arose, the Individuals who had committed offence while in custody of custodian force India.

Since such Individuals are under Article 43(2) Geneva Prisoners of War convention which regards dispute of prisoners in para 7 of Armistice agreement gave Neutral National Repatriation Commission an authority to exercise its 'legitimate function's and' responsibility for the control of prisoners of war under temporary Jurisdiction.

Although the implementation of Armistice agreement had tried to Contain Code of provision more

appropriate for the twentieth century Wars and armed conflicts than the earlier instruments. It permitted Prisoners of War to make a free choice between repatriation and non repatriation. Agreement which further emphasized, was difficulties may be avoided when a detaining powers offers asylum to persons numbering in hundreds of thousands. It must be assumed the genuine prisoners deserves not to be repatriated they ought to be subject to impartial verification, so that repatriation under confusion be avoided.

In the final proceedings legitimate, logical and chronological interpretation suggests :

- (a) "The manipulative character or arbitrarily narrow Soviet Communist Construction of convention is established when the document is read in its whole context.
- (b) Position of U.N. majority is Safely with in the limits of the Convention, both as far as resolution 18 (VII) and U.N. Command proposal of September 28 1952 are concerned.
- (c) U.N. Stand is also supported by general and particular Internationa law and by postulate of

increasing of projection of human rights concepts in International practice and Law". (14)

Along with, this looking at the Korean repatriation problem the agreement also gave an interesting insight into the general question of the role of International law in the world community. If all the complex and different problems and limitations are to be recognized especially the factors like social culture then it appears that growth of International law is subjected to essentially the same pre-requisites as any other developed System.

"Failing for a alternative solution with in the time period, prisoners at the end of fixed period were to be released, so as end the termination the detention of Prisoners of War. Thus the armistice agreement gave balance to the necessity of allowing the prisoners a free choice between repatriation and non repatriation. This was done to free all prisoners humanly and promptly after the end of hostilities by providing a limited period of custody with opportunity for repatriation. An unwarranted prolongation of the period of captivity of Prisoners of War runs counter to both Article 75 of Geneva Prisoners of war convention 1929 and article 118 of Geneva Prisoners of war convention 1949. Prisoners be released and repatriated without delay after the cessation of hostilities" (15)

Philosophy and the practice of Panmunjom Armistice agreement has a distinct advantage of operating on the level of lofty but vague value concepts, subject to contradicting interpretation, instead of exhausting logically and morally, it operated in politically Justifiable manner, with existing legal basis and all potential links it provides in ideologically split world.

"Constant adjustment and actual use to the necessities and feelings of a predominant majority of world community, through legal interpretation and adequate forward-looking legislation can give international law the necessary flexibility and versatility.

Thus agreement is an extensive interpretation of Prisoners of War convention with hard effort to cover inequitable situations, it suggest the this document was drafted on the periphery rather than in the center of living international law. One may than consider it as a milestone in its own rights but it also reminds of progressive type of legislation, which the particular climate and strains of the present world community requires". (16)

2. EXTRA-TERRITORIAL OR DIPLOMATIC ASYLUM

Foreign Ambassadors, Ministers, and other accredited diplomatic officers are entitled under International Law to certain well recognised immunities from local Jurisdiction, including among others, immunity of their official residences and offices from invasion by the local authorities. Such authorities may not enter an embassy or legation for the purpose of serving legal process or of making an arrest.

These places are declared by treaty provisions to be inviolable however, such treaty obligations are coupled with prohibition against the use of consular premises for purposes of asylum. Reasons analogous to those appertaining to embassies and legation, be public vessels of a state while in the ports of a friendly foreign state, enjoys certain immunities under international law from local jurisdiction. It is therefore frequently happens, that in time of local political disorder, that persons desiring to evade the local Jurisdiction or to escape from threatened danger seek refuge in these places.

As regard to diplomatic asylum Article 6 of Harvard Research draft on diplomatic priveledges and

immunities provides, "A sending state shall not permit the premises occupied or used by its mission or by a member of its mission to be used as a place of asylum for fugitives from Justice".. As these places were considered extraterritorial i.e. beyond the Jurisdiction of the local authority thus provides an exemption to political offenders and fugitives from justice.

"The question of granting asylum in the premises of a diplomatic mission, arises under number of principles. It is possible that in times of an uprising or civil war or Coup'd'etat the leaders of a defeated faction or a members of the government who have been disposed may seek shelter in the premises of a diplomatic missions in the Capital. It may also happen that person may seek such shelter committing a political assassination or even a common crime" (17)

The granting of asylum by these foreign governmental agencies was formerly recognised and practiced to a considerable extend but in more recent times it has been discontinued for the most part, except in a limited number of countries. Practice shows that such refuge in the premises of a mission is sought only in cases of extreme urgency, only when the local government has become unable to assure the safety of the

refugee and his life is consequently endangered through mob Violence then protection may be granted. In no case shelter be continued after the emergency has passed.

The Basis on which diplomatic asylum is exercised is that the diplomatic mission enjoys extritoriality and formed part of the territory of the home state of the diplomatic envoy. The distinction between territorial asylum and diplomatic asylum is since the competence to grant territorial asylum is derived directly from supremacy of a state over its territory, whilst in the case of diplomatic asylum the refugee is within the territory of the state from whose Jurisdiction he is seeking protection.

"During early Seventeenth and Eighteenth century immunity of domicile was claimed by diplomatic envoys to grant asylum to refugees within the boundaries of their residence but it was never accepted as a general principle of International Law. Grotius refused to recognise the right of asylum in legations, embassies and Vattel termed practice of asylum as an abuse of diplomatic immunity. The modern view regarding

inviolability of diplomatic premises, as borne out by state practice and decisions of national courts, tends to show that such premises are regarded as part and parcel of the territory of the state in which they are situated and that these premises are inviolable merely

for the purposes which are necessary for effective functioning of the diplomatic mission the theory of extritoriality of diplomatic premises does no longer find support. It is, therefore, asserted that the so-called right of diplomatic asylum has no basis in international law and as such cannot be recognised." (18)

Diplomatic asylum is sub-divided into :

1. Asylum in Foreign legations
2. Asylum in Consular premises
3. Asylum in War ships
4. Asylum in Merchant Vessles
5. Asylum in Premises of International Institutions

1. Asylum in Foreing legations :

Modern International Law recognise no general right of a head of mission to grant asylum in the premises of legation or embassies, as such a step would exempt the fugitive from the regular application of law and administration of Justice by the territorial state. Granting of diplomatic asylum in legations goes against the two principles it is a violation of territorial sovereignty of a state thus a sort of intervention. Secondly, it implies a great abuse of authority emanating from principles of diplomatic immunity. Such

grants prevent the territorial law taking its own course and thus would involve a derogation from the Sovereignty of the state where the diplomatic mission is situated. (19)

Two cases relating to the grant of diplomatic asylum in foreign legation was reported in Britain in 1726 & 1747. 'In 1726 Duke of Riperdia Minister of Spain accused of high treason took refugee in embassy of Britain in Madrid but he was forecibly arrested as asylum could not be granted in embassies. British ambassador complained of this act as a violation of International Law'.

"In a another case in 1747, a Swedish merchant springer accused of high treson took refuge in the house of British ambassador at stock-holm. On the refusal of the British envoy to surrender springer. Swedish government surrounded the embassy with troops. Later springer was handed over to Swedish government under protest, Great Britain complained and recalled her ambassador as Sweden refused to make the required repatriation" (20)

As these two examples show the right of asylum although claimed and openly conceded, was never-the less recognised.

In recent times diplomatic asylum has been discontinued in most of the world except in Latin American countries where there is extreme government instability and violence, Latin American countries "grant asylum to political refugees in times of revolution and persuasion of certain classes of the population. It is however acknowledge that this practice is not based upon a rule of International Law but merely upon local usage. It does not have the validity of the general rule of International Law, according to which there is no obligation on the part of the receiving states to grant to envoys the right of affording asylum to individuals not belonging to their state". However, it follows from the inviolability diplomatic premises under Article 20(1) of the Vienna Convention, agents of the receiving state may not enter them without the consent of the head of mission that if a refugee is allowed to remain in the Embassy, the correct procedure for the territorial state is to take up the matter with the foreign state concerned, not to break into the premises. In British view the temporary shelter may be provided to foreign nationals whose lives are in immediate danger e.g. if pursued by a violent mob.

"Several International agreements have been concluded among the Latin American countries regarding granting of asylum. Notable among them are the 1889 convention regarding International Criminal law between Argentina, Bosnia, Peru, Uruguay, sixth International Conference of American States in Havana 1928 adopted a Pan American convention on asylum which laid down that, asylum granted to political offenders in legations shall be respected, subject to certain conditions".

This convention was later amended in 1933 by the Seventh International American Conference at Montevideo, Uruguay. Article 1 of the former convention was amended, in as much as, it forbids the granting of asylum to persons accused or condemned for common crimes, to deserters from the army or the navy. Such person taking refuge in foreign territory shall be surrendered upon request of the local government through extradition treaties and constitutes asylum as an institution of humanitarian character, it is not subject to reciprocity and that any person may resort to its protection whatever his nationality." (21)

"The theory of extraterritoriality of diplomatic premises does no longer find support, it is therefore asserted that so called right of diplomatic asylum has

no basis in International law as such it can not be recognised. This view finds support in Peru-Colombia asylum case."(22)

"Haya de la Torre a political leader and a Peruvian national was accused of having instigated a military rebellion, he was granted asylum in the Colombian embassy at Lima on 3rd Jan 1949. The granting of asylum was subject of dispute between Peru and Colombia. The matter was referred to ICJ. According to Pan American Havana Convention on asylum 1928, subject to certain conditions asylum could be granted in a foreign legations to a political offender who was the national of the territorial state. The question in dispute was whether Colombia as the state granting asylum was entitled unilaterally to qualify the offence committed, in a manner binding on the territorial state that it was decide whether, it was political offence or a common crime. The court was also asked to decide whether the territorial state was bound to afford the necessary guarantee, to enable the refugee to leave the country in safety. In its judgement of 20th November 1950 the court held "that institution of diplomatic asylum owes its development in Latin American to extra legal factors with different political interests of the government and have favoured

the mutual recognition of asylum apart from any clearly defined Judicial system and thus should not be regarded as capable of generalisation. The court considered that on January 3 and 4 1949 there did not exist a danger constituting a case of urgency within the meaning of Article 2 para 2 of the Havana convention 1928. Thus "consideration of conveniences of simple political expediency seems to have led the territorial state to recognise asylum without that decision being declined by any feeling of legal obligation" (23)

ICJ declared :

"Diplomatic asylum withdraws the offender from the Jurisdiction, constitutes an intervention in matters which are exclusively within the competence of that state such derogation from territorial Sovereignty cannot be recognised unless its legal basis is established in each particular case".

The court by fourteen votes to two rejected the Colombian contention that it was entitled to qualify the offence by unilateral decision binding on Peru and allowed only "Provisional qualification of any offence alleged to have been committed by a refugee. The treaties in question did not support the Colombian contention.

The court also found that Peru had not pronounced the fugitive to be other than political offender but that asylum under the terms of Havana Convention 1928 should be granted only conditions of urgency, which did not exist in this case."(24)

Later Colombia then applied to the court for interpretation in Haya de la torre case. (25)

Asking whether in accordance with the law in force, between the parties and particularly American law, government of Colombia is or is not, bound to deliver Haya de la Torre. The question in dispute was whether or not asylum once having been granted must be respected by the receiving state unless terminated in fact. The court rejecting the appeal held that Colombia was not bound to surrender Haya de la Torre once the asylum has been granted even though irregularly the convention was silent on the question of its termination.

The court said that "grant of asylum is a continuous process constituted by the protection which the embassy affords him being a diplomatic act ... it involves the legation state in a continuous legal relationship with the territorial state. Before the court decision it was generally assumed that asylum if

allowable at all was to be regarded as an aspect of inviolability of legation. "The court decision has proved specifically asylum must stand upon its own feet and not to be linked with inviolability of Premises. A fugitive might well be immune while in a legation building but still not have asylum so as to relieve the sheltering state of the duty to deliver him".(26)

Regarding the granting of diplomatic asylum in legation and embassies outside Latin American countries. There is no universal rule. USA being a signatory to the Havana convention 1928 did not ratify the treaty explaining explicit reservation and strongly disapproved the principle of asylum. It has however on occasion sanctioned the granting of temporary refuge by American public Vessels when the affording of such asylum seemed to be necessary for the preservation of human life. However, this should only apply when the local authorities are unable to ensure the safety of the refugee and his life constantly endangered by mob violence. In no case should shelter be continued after emergency has passed.

In 1930 American diplomatic officers sent a circular to Latin American countries regarding grant of diplomatic asylum.

"Immunity from local jurisdiction is granted in foreign esbassies and legations to enable the foreign representatives and their suites to enjoy the fullest opportunity to represent the interest of their country. The fundamental principle of legation is that it should yield entire respect to the exclusive jurisdiction of the territorial government in all matters not with in the purposes of the mission. The limited practice of legation asylum is a derogation of the local jurisdiction. It is but a permissive local custom practiced in a limited number of states where unstable political and social conditions are recurrent. There is no law of asylum of general applications in International law."(27)

Inspite of rejection of asylum in legation by U.S. temporary asylum have been granted in times of grave political emergency, or for humanitarian reasons to political refugees in imminent danger of their lives. "American ambassador in Haiti in 1911 was permitted to give shelter to the deposed President in order to save innocent life". During Chinese revolution in 1911 American charged 'd' affair at Peking was instructed at his discretion 'to grant temporary refuge to Emperor and Empress Dawager, Stating temporary refuge be accorded

with the uniform policy of this government in order to preserve innocent human life, assuming such actions would not unnecessarily endanger the safety of legation quarter" (28)

"In a similar incident 1917 Ex-president of Costa Rica Gonzales was afforded shelter in the American embassy following the revolution who had overthrown the government later, department of state, that an Amnesty has been declared, and that safe conduct out of the country had been arranged for the president.

In 1919 following a coup d'etat and establishment of dictatorship in Honduras, the American Minister there granted asylum to certain person to save them from condition of arrest and execution, in his report Minister stated that, he permitted five gentlemen to remain in legation after they had rushed there, as the brutalities were purely political and that parties were in great bodily danger.

During Spanish Revolution in 1936 American ambassador in Madrid was instructed to give refuge to those who were in actual danger from mob violence or from hostilities, but not grant protection for the purpose of enabling the refugees to avoid arrest on charges brought against them by proper officials"(29)

"In recent times and 'ad hoc' arrangement of diplomatic asylum was granted to Cardinal Mindszenty in U.S. Embassy in Budapest after the unsuccessful Hungarian uprising of 1956. Any punitive action against Cardinal Mindszenty would have brought opprobrium on the Hungarian authorities. As long as he remained in the embassy the Hungarian authorities took no step to seize him". (30)

Reading British practice, there is no general legal right to grant asylum diplomatic, in consular premises or on public ships and no legal right to demand it, but on humanitarian grounds it has been frequently authorized its diplomatic and other officers to grant temporary asylum in cases of emergency.

"In 1896 Webster and Finley reported upon an incident arising with the grant of asylum by German consul at Zanzibar to one Khaled who had failed in attempt to seize the Sultan's Palace by force. German government claimed that by virtue of a treaty between Germany and Zanzibar conferring extraterritoriality upon German subject, the German consulate was in effect German soil. It was not claimed that Khaled possessed German Nationality.

Webster and Finlay, denying that treaty which dealt with the question of asylum as follows :

"The proposition that German consul can grant asylum to alleged criminal; whether political or ordinary cannot be sustained. It is true such a privileged is been exercised by Diplomatic representatives in Spain and in South America, but in Britain this right of asylum can be conferred only by the consent of the countries to whom they are accredited. It is no way necessary that ambassadors house should be an asylum for persons charged with crime". (31)

The inviolability of foreign embassy both from Judicial process and from executive action was clearly established in Britain concerning the incident of Sun Yat Sen in 1896.

"In 1896 Sun Yat Sen Chinese national and a political refugee was detained as a prisoner in the Chinese legation in London with the apparent intention of transporting him to China, on the matter coming to light, His friends applied to the court for the issue of writ of Habeas corpus. The court in judgement declined doubting the propriety of such action where a foreign legation was concerned. The Chinese minister was requested by British government to release the man whose

detention was contrary to law and an abuse of diplomatic privilege, he was released on the following day. (32)

Despite the fact that asylum in some times granted in legations its legality is doubted in the realm of International Law. Vienna convention of 1961 on Diplomatic Relations does not say any thing like the right of the state to grant asylum in its legations abroad. Likewise Article 6 Harvard Research draft on Diplomatic Privileges and Immunities also provides "A sending state shall not permit the premises occupied or used by its mission or by a member of its mission to be used as a place of asylum for fugitives from justice".

Regarding Indian practice of granting diplomatic asylum in legations and embassies. India is against diplomatic asylum, government of India issued a circular to chanceries in India on 30th December 1967 "Government of India wish to draw attention of foreign and commonwealth diplomatic mission in India that India does not recognise the right of such mission to give asylum to any person or persons in their premises. Immunity from local Jurisdiction is granted to legations to enjoy fully the opportunities to represent the interest of their states...., Affording of asylum is not within the purposes of Diplomatic mission. India expects the

foreign mission in India to respect this well established international practice".(33)

Inspite of this India did gave diplomatic asylum in 1950 to late King Tribhuvan of Nepal when he sought asylum at the height of Rana revolt against him. Later asylum was accorded to svetlana Stalin's daughter. It is considered that the practice is motivated by humanitarian considerations, But Political consideration could not be ruled out. Territorial states do not interfere with these practices in most of the cases because they do not intend to strain relations with foreign states over the question of custody of an individual.

"In the case of Soviet defector Aziz Olough Zade who had sought refuge in the American embassy in India before placing himself under the protection of government of India. Indian Government urged foerign mission in India to respect the well established Internation practice of not affording asylum to any person with in their legation premises as such grant of such asylum is not recognise by a genral principle of International Law. " (35)

Thus, practice of granting asylum in legations and embassies has not been recognised as principle of

International law but temporary refuges could be granted in case of immement danger to life. Which is been justified on humanitarian considerations.

2. ASYLUM IN CONSULATES OR CONSULAR PREMISES :

Similar principles subject to same exception apply in the case of consular premises. However government discourage granting of asylum in consulate and it does not enjoy that much of Sanctity as diplomatic asylum in legations and embassies, Nevertheless some people do take asylum in consulates and they are not disturbed because of commity.

In a similar case, a Russian Engineer working in India who was wanted by police in connection with the murder of his wife took asylum in Soviet consultate in Calcutta. (36)

Regarding American practice of granting asylum in consulates, at the first instance American government do not recognise asylum in consulates except in mob violence where life of person is in Sudden danger. At several occassions U.S. have granted asylum in consultates. "In 1907 the consul in San Salvador reported to the department of state U.S. that "Dilomatic agent of Nicargua here seeks asylum in this

consulates owing to continued threat and denial of passport".

Department instructed the counsel "You may grant temporary protection to diplomatic agent of Nicaragua if he is in immediate danger from lawless violence, agent must suspend all diplomatic business and communicate with other world while under protection American consulate should not be used as Nicaraguan legations".(37)

"In another case during a revolutionary outbreak in Persia in 1908 American counsel at Tabriz reported that he has offered a Muslim subject of Persia temporary asylum from assault at the hand of two Muslim outlaws.

U.S department in its reply stated It is not an instance of asylum from the operations of the laws of the land but merely a charitable shelter for the time being from imminent law-less danger. Consulates does not give asulum in such a way to withdraw any accused person from the rightful jurisdiction. (38)

A consular convention was concluded between U.S.and Cuba in 1926 Article VIII of which provides : "Counsular offices shall not be used as a place of

asylum. Consular officers are under the obligation of Surrendering to the proper local authority which may claim them, persons prosecuted for crime in accordance with the domestic laws of the country which receives them, who have taken refuge in the building occupied by the consular office".

As consulates do not possess the immunities of granting shelter but can provide temporary refuge on certain occasions as specified above. The treaties of U.S. which specify inviolability for consular offices and dwellings in every instance forbids their use as a place of asylum.

3. ASYLUM ON WARSHIPS :

Asylum on board warships applies the same laws of extraterritoriality as of legations, embassies and consulates, thus when the grant of asylum on board warships are analysed, it is that men of war enjoy immunity from local jurisdiction. Fugitives once on board is immune from seizure by the territorial state as this is not asylum, mere refuge does not exonerate the sheltering state from the duty to deliver up the offender.

Havana Convention on diplomatic asylum, 1928 recognises in principles the right of asylum on warships for political offenders but not for persons accused or convicted for common crimes or for deserters from army or navy. As such persons should be surrendered upon request of the local government, through extradition treaties and constitution and laws of the country of refuge (Article 1).

Some writers are of the view that individuals not being members of the board vessels who take refuge after committing a crime on shore cannot be arrested by local authorities and removed from vessels in case the commander of vessels refuses to hand over fugitives.

On the other hand some writers are of the view that such fugitives should be handed over to the local police. Such writers do concede that asylum may be granted on humanitarian ground where there is extreme danger to the life of individuals seeking it.

Charles G. Fenwick remarks asylum could also be given to political offenders "While asylum is no longer granted to Ordinary criminals it is still granted quite frequently to political refugees". (39)

To a large extent diplomatic asylum on board warships has tended to assimilate the position of warships with the status of diplomatic premises. U.S. Navy Regulation and Naval instruction act 1913 clearly contemplates that, right of asylum for political or other refugees has no foundation in International law, those fugitives who board vessels in order to avoid arrest may be handed over to local police. These U.S. Naval instructions refer to local usage in South America which sanctions grant of asylum on board warships it is part of regional treaty law only.

U.S.A. and U.K. reluctantly accept the practice of granting asylum on board warships for a temporary period on humanitarian grounds. Temporary grant of asylum is made through special treaties and arrangements with the territorial states including sheltering the fugitives from political persecutions, these arrangements became part of regional treaty laws.

"In 1863 instructions were given to H.M. Naval officer that H.M. Ships "while lying in the ports of a foreign country, are not to receive on board persons although they may be British subjects, seeking refuge for the purpose of evading the laws of the foreign country to which they may have become amenable". During

political disturbances or popular tumults, refuge may be afforded to persons flying from imminent personal danger". (40)

These principles are still the basis of Queens Regulations and admiralty, Instructions.

The attitude of U.S. is similar. In 1913 two ~~Mexicon~~ and an American correspondent boarded a U.S. ship. A U.S.S. ship "whelling", in the the harbour of Mexicon and then asking for protection U.S. Secretary of state in a reply "as a general rule against the policy of this government to grant asylum in its ships to the citizens of foreign country engaged in political activity. Temporary shelter has been conceded to such persons on ground of humanity done with great circumpection lest advantage to be taken of it to further the political fortunes of individuals with the result of involving us in domestic politics of foreign countries". (41)

U.S. Navy Regulations make specific reference of granting asylum to political refugees in countries where revolutions are common place and governments unstable.

The practice is not found in International law but is justified as a usage of long standing.

4. ASYLUM ON MERCHANT VESSELS :

Mechant vessels do not enjoy immunity from local shelter, political refugees can be withdrawn from the vessels while it is with in the territorial waters. Thus isolated incidents of asylum on merchant ships have not been established as usage.

A person who commits a crime on shore and than seeks asylum on board of merchant ships is arrested by local police either before the ship leave the port, when it comes to another port of the same state, as this involves local interest and the peace of port is disturbed. Thus in order to avoid such situation shelter in Merchant Vessels are not entertained.

U.S. practice in granting asylum on merchant Vessels is,that it insists on courtesy of informing the U.S. counsel of the facts rather than the immunity of American ships from public intervention, therefore there is no right of asylum on board of merchant vessels.

In a case regarding granting of diplomatic asylum on merchant vessel in 1922 American Minister in Gauteamala reported to department of state in reply to an inquiry of Mexican Minister ,as to whether a certain Gautemalan to whom the mexicon legation had

given asylum and it would be safe it arrest if placed abroad on an American vessel in Gautemalan harbour.

U.S. state department replied "Gantemalan authorities would have the right to effect the arrest of a person in such circumstances so long as the vessels was with in the Gantemalan Water". (42)

"The Institute of International law at stockholm in 1928 adopted a draft resolution, Article 21 states "to the effect that the captain must be aware of the fact that his passenger is a political refugee, he must accept his conditions and act does not constitute on his part assistance to one of political parties, disputing power with another, and must not land the refugee in another part of the country.

Latin American Republics have unanimously decided to bind themselves, to respect the inviolability of the right of asylum abroad the merchant vessel who so ever nationality, persons accused of common law crimes can be taken from said vessels, by order of a cometent judge and after due legal procedure Fugitives from Justice, accused of political crimes or of common law crimes of political nature can in no case be removed from the merchant vessel. (43)

In the Case of EISLER it was stated : "In case of ordinary criminals British practice is criminals finding refuge on Board British ships of War in foreign ports ought to be surrendered to the local authorities." (44)

Merchant vessels are not exempted from local jurisdiction and therefore can not grant asylum to local offenders.

5. ASYLUM IN THE PREMISES OF INTERNATIONAL INSTITUTIONS

International law does not recognise any rule regarding the grant of asylum in the premises of International Institution. The head quarters agreement of U.N. and of specialised agencies reveal no general right of international institutions to grant asylum or even refuge in their premises to offenders as against the territorial state, not even a right of protection on humanitarian ground, it is difficult to conceive however that a right to grant temporary refuge in an extreme case of danger from mob violence would not be asserted and conceded". (45)

Regarding the legal status of granting asylum in U.N. and other International Institutions among the various aspects authorities of the host state shall not enter the premises, except with the permission of

organisation provided the institute premises shall not be used as a place of asylum.

State practice supports the view that no customary International law on subject of asylum has come into force.

Institute of International law at both if sessions in September 1950 adopted a resolution on asylum that do not support granting of asylum in the premises international institutions.

Article 6 Harvard Research draft convention on diplomatic privileges and immunities 1932 places an obligation upon the head of the mission not to allow the premises as a place of asylum.

However Article 2(17) of Havana convention on diplomatic officers does not recognises the grant of asylum in the premises of International Institutions to political offenders by customs and conventions. It provides diplomatics officers are obliged to deliver the offender to the compitent local authority any persons accused or condemned for crime and have taken refugee in mission.

Thus it has been well established the premises of International Institution should not be used as place of asylum

In the light of the practices stated above it would appear in both types of asylum i.e. diplomatic and territorial asylum, the ultimate purpose is to accord protection to the refugee, or person concerned to bring him under the Jurisdiction of the granting state. The distinction between two types of asylums was defined in Peru Columbia asylum case- 1950 ~

In . . . territorial asylum the refugee is with in the territory of the state of refuge, a decision with regard to surrender implies only the normal exercise of territorial sovereignty. The refugee is outside the territory of the state where the offence was committed and decision to grant him asylum in no way derogates the sovereignty of that state".

"In case of diplomatic asylum the refugee is with in the territory of the state where the offence was committed. A decision to grant diplomatic asylum involves derogation from the sovereignty of that state. It withdraws the offender from the Jurisdiction of the territorial state and constitutes an Intervention in

matters which are exclusively within the competence of that state. Such a derogation from territorial sovereignty cannot be recognised, unless its legal basis is established in such particular case".

Thus territorial asylum which is a well recognised legal right in International law on the contrary diplomatic asylum is a matter of humanitarian practice rather than a legal right, granting of diplomatic right asylum involves derogation from the territorial sovereignty of the state. Most nations do not recognise it as a general right of International law.

In both types of asylum main purpose is to afford protection to the asylum seeker on humanitarian basis thus political offenders are given asylum if they are in imminent danger of their lives or persecuted on race religion or political beliefs but persons wanted on criminal charges or warrant of arrest has been issued against them by the competent authority then they are not accorded asylum but must be surrendered to local authority, as stated in Article 1 (2). "The right to seek and enjoy asylum may not be invoked by any person with respect to whom there are serious reasons

for considering that he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instrument drawn up to make such provision in respect of such crimes".

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CHAPTER - II

POLITICS OF ASYLUM

CHAPTER - 2

POLITICS OF ASYLUM

As we turn the pages of recent history and analyse events, we find that the most destructive wars of the current century were either the product of political aspirations of the modern dictatorial regimes or the wave of national awakening within closed door frontiers of some countries.

In a given situation such as this, apart from destruction of men and material, human problems assumed frightening proportions. Modern refugee movements which started in Europe during the world wars and subsequently spread throughout the world, gave rise to new class of people who are supposed to be homeless, stateless, living constantly in condition of insecurity. This has created grave economic and political problem for countries who temporarily provides them a sanctuary. In the beginning it was a temporary and a limited phenomena but it has now come to be acknowledged as universal, recurring and countinuing process.

Almost every part of the globe has witnessed mass exodus of refugees. World War II caused the most

formidable displacement of population ever experienced. More than a million refugees most of them Jews, left Germany and settled in western Europe, several thousand were sent in concentration camps and many made POWs or forced labourers. It is estimated that in May, 1945 there were 40.5 million uprooted people in Europe. Besides Wars even Internal conflicts and political upheavels resulted in rfugee exodus. In 1917, as a result of Bolshevik revolution on 17th October 1.5 million Russians were dispersed and left stranded.

Europe saw the major post war movements of refugees. In East Europe as a result of communist coup in Czekoslovakia in February 1948 60,000, Czeck refugees fled to the western zone of Germany and Austria. When the Soviet armies moved into East Europe at the end of World War II they installed Communist Governments in Poland, East Germany, Romania, Bulgaria, Czeckoslovakia and and Hungary. At the outbreak of Hungarian revolution in Octuba 1956, more than 20,000 hungarians poured into neighbouring Austria. Since than there has been a steady West-Ward flow of escapees from communist countries of Eastern Europe. At the end of 1964 a staggering figure of 12,000 to 15,000 refugee exodus per year has been estimated. (1)

A chain of events in Hungary in 1956 thoroughly unnerved the stalinists. The moderates managed to destabilize the official policy. The Hungarian revolution was an antisoviet uprising that shooked the communist world. In Hungary the Prime Minister. Rokosi, established a co-alition government in 1948. This regime was short lived as there was a mass uprising against the Government which gained momentum after Stalins death in 1953. Soon after his imperialistic policies received a set back and those who succeeded him in Kremlin administered their own policies including reapproachment with the neighbouring states.

At home some weak domestic reforms and crisis of authority resulted in partial easing of Soviet grip over its East European satellites. The consequences were grave, among Hungarians there was a growing disenchantment with the government and there was an economic crisis, shortage of food at home and mismanagement of oil fields and coalmines. Moreover Hard currency was short in supply and foreign trade diped sharply. For all these illls communist regime had been held responsible. The P.M. Mr. Rakosi in an attempt to patch up inducted the deposed former leader

Mr. Imre Nagy into the workers party and negotiated a pact of non-intervention with Marshall Tito in order to avoid any confrontation with Yugoslavia.

Despite such efforts of reconciliation in the country, matters could not be pacified. There was hectic activity among the Hungarians when they decided to hold a mass meeting in Budapest on October 23rd, 1956. They presented a sixteen points charter of demands to the Government. Notable among them were withdrawal of Soviet troops; denunciation of Warsaw treaty; neutralization of Hungary on Austrian model; Installation of Provisional government under Imre Nagy and holding of fair elections involving co-alition parties" (2)

The presence of Imre Nagy in Hungarian workers party gave a filip to the ideological unity with the polish national movement.

In the mass meeting huge demonstrations were held against the government the Crowd flocked the Parliament square and was about to pull down the statue of stalin when police resorted to firing in which several Hungarians fell to their bullets. The

Government denounced the demonstrators as Fascist, Ironically the demonstration which was sought to be peaceful turned out to be a brutal display of force by the armed guards of the government. Enraged by firing, the revolutionaries succeeded in gaining control of many a key position. Soviet troops lost control and Mr. Nagy took over as President. Demoralised Soviet troops started withdrawing. The new President ended one party rule and declared Hungary's neutrality with the West.

Incidentally this anti-Soviet revolution was short lived, International political situation turned out to be such that no help could be offered to the new government by friendly countries. The indifferent attitude of the Afro-Asian nations and passivity of Marshal Tito added a new dimension. Beside, U.N. was engaged in the Suez crisis which could not provide any material or moral assistance either. As a consequence Mr. Imre Nagy could not stabilise his position and the ambitious coalition partners began to cast their shadows. Infighting broke out. Soviet manipulation from outside encouraged the fighting and ultimately succeeded in reasserting themselves to gain control over Hungary again. This time take over was

more brutal and firm, Soviet troops and their tanks entered in the country as victors and fired indiscriminately in revenge, on a large unarmed crowd killing several thousand.

On October 30th, 1956, reinforcement began pouring in from North Eastern Hungary and took over the control of military and industrial centres. Desperate protestation of co-alition government of Hungary to U.S.S.R. dissipated in the air.

The infuriated soviet troops acted in revenge and killed several thousand Hungarians, they also rounded up several to concentration camps. Mr. Nagy was caputred and later executed and Janos Kadar took over as President. A large number of people were able to escape into neighbouring Austria from where mass exodus of border refugees dispersed into several Western European countries such as France and U.S.A. who offered them asylum on humanitarian ground. Several thousand Hungarians were made home-less and stateless. As the frontiers with Austria was, by a coincidence, physically open for the first time since 1945 a great flow of refugees poured across to western Europe and overseas, who offered them ready assistance. Hungary is reputed to have provided one of the largest number of

refugees estimated to be 800,000 and by end 1956 1,53,000 has sought safety in neighbouring states (3)

"United Nations General Assembly declared in its resolution of December 12th, 1956 that the Soviet Union of using its armed forces against the Hungarian people is violating the political independence of the country and is also the violation of U.N. denounced the forceful occupation of Hungary by the Soviets and offered assistance through its several specialized agencies to the refugees, Several U.N. refugees assistance agencies as well as Red cross helped the homeless and stateless people to settle down in various safe places. Large number of Hungarians were deported by the Soviet armies to Russia in sealed trains. Several thousands fled to neighbouring Austria (4)

In the aftermath of 1956 crisis Khrushchev worked to reconstitute the Soviet block so as to pressure the political structure that had developed, vigorously combating revolutionist who wanted to introduce more freedom in the system, efforts being made to bring order in Hungary through President Mr. Janos Kadar who had been guided by instructions from Moscow thus several reforms were introduced. During the first ten days of fighting, Russian troops had killed

about 25,000 Hungarians. The chaotic conditions in Hungary intensified with the shortage of food and fuel and starvation like conditions prevailed.

The Soviet attack on the suppression of peoples uprising led to a mass exodus of some 28,000 civilian refugees, many of them women, children and aged people. Heart rending descriptions of the pitiful conditions of the Hungarians refugees were given by Austrian authorities whose number had swelled to 100,0000 more than one percent of Hungary's total population. The great number of refugees were in an exhausted conditions who avoided deportation to Russia and ruthles killing by Soviet armed forces.

Many countries provided moral assistance to Hungarian authorities, United Nations High Commissioner for refugees announced 25,000 refugees had been provided asylum in U.S.A., which provided them with permanent residential status so that they can remain there with full freedom. West Germany accommodated 3,000, United Kingdom 2,5000, Switzerland 4,000 and unknown number of regugees were settled in france. Although several thousand of Refugees had been offered asylum in various countries still 60,000 were in

Austrian reception camp with their number continuously increasing. Austrian state secretary Kiesky, stated that, "refugee situation had become catastrophic, asylees were continuing to pour into Austria and the Austrian government were facing the gravest difficulties in accomodating them, in transit camps and providing them with clothes and medicines".

U.N. Secretary General Hammerskjold issued an appeal to all countries to provide financial assistance for the Hungarian Refugees. International Red Cross along with other International Relief Organisations took a huge task of humanitarian assistance for providing relief and security to the uprooted people of Hungary. Negotiations were made for the resumption of work and withdrawl of Soviet troops with in the framework of war_saw treaty, economic assistance was provided by abolishing the collective farming, with revision of second five year plan, & with more production of consumer goods. In an effort to reconcile, negotiation with the leaders of the Sqcial democrat and the other parties were made with view to their entry into a co-alition government. Inspite of all these efforts the guerilla -warfare went on with repeated incidents of demonstration which showed that the defiant spirit of the people was in no way abated.

In the second half of the 20th century the scene of mass exodus of refugee problem shifted from Europe to South Asian sub continent, where Indian masses were simmering under the British yoke since a long time. The Indian congress leaders were constantly negotiating with the British government for complete Independence, Gandhiji's call for Quit India movement further inflamed the desire for total independence. Unfortunately the political environment turned out to be such, that communal passion were aroused to such an extent, that demand for separate electorates for Muslims gained momentum. In 1940 a resolution for the creation of Pakistan was passed at Lahore. Political parties continued negotiation with the U.K. government which finally agreed to grant independence with partition as an indispensable condition. Two young states India and Pakistan thus came into existence, the former with a Hindu majority and the latter with a Muslim majority.

Be it as it may, the partition however was not a smooth transfer of power. It initiated a series of communal disturbance in both the parts of the sub-continent with heavy toll of life and migration of population from one country to another. It is estimated that 15 million, people crossed the newly defined

borders in the greatest mass migration ever recorded in the country. No amount of persuasion nor respect for human dignity could check the Killing (5)

The refugee problems with all its direct and indirect consequences was engendered by religious passions, the most effected states were Bengal and Punjab. Another problem which latter assumed a menacing proportion in both the countries was the question of Kashmir. Immediately after the birth of new states of India in 1947, Indian government was confronted by a gigantic immigration problems. The number of immigrants from Pakistan to India between 1947 and 1952 estimated at about 8,500,000; ; approximately 5,000,000 came from Western Pakistan and 3,500,000 from East Pakistan during 1950-51. According to general census of 1951 the total number of displaced persons in India in 1951 was 7,476,287 (6).

Ever since the creation of Pakistan the two countries could not live in peace for variety of reasons, most intriguing of which was the Kashmir imbroglio. Kashmir happens to be buffer state between the two countries and has its own strategic values. Population composition is such that Muslims were in

Majority, and the state was ruled by a Hindu Maharaja Hari Singh who in exercise of his choice signed an instrument of accession in favour of India. It regarded as fait accompli as to the Indian constitution, Pakistan naturally did not concede to it. Tensions heightened leading to border skirmishes in which a chunk of territory came into Pakistani possession, which they are holding on till date, and have pressed for plebiscite. On India's request on 30th December, 1947 the Kashmir question was brought before the United Nations Security Council, where it still hangs on. Meanwhile bilateral negotiation to sort out the problem could not make headway nor is any solution yet in sight.

Relations between the two countries became more tense. In 1965 relations were strained to such an extent that an armed conflict became inevitable. It was an undeclared war localised to Western Sector, the hostilities caused heavy losses of both men and material in both the countries.

East Pakistan relatively calm, as Bengali Nationalism was disenchanted with the government due to imbalances in economic and cultural development between

the two Wings of Pakistan. The war did not last for long, The then two super powers U.S.A. and U.S.S.R. realised the gravity of the situation and proposed a U.N. intervention.

On 6th September 1965 Security Council passed the resolution, asking both parties for a ceasefire. The two countries agreed. Though the number of refugees was not large. Some of them fled to Pakistan occupied territory called Pakistan Occupied Kashmir. Some remained in Jammu Several thousand Hindus and Sikhs left their homes in the part called Azad Kashmir and took refuge in Eastern Kashmir. While Muslim Kashmiris sought shelters in Azad Kashmir. International assistance was given to both through the U.N. and private bodies, particularly the International Red Cross, but inspite of all this the refugees were in terrible plight living constantly in insecurity. (7)

The ceasefire however proved to be stop gap arrangement as violation of ceasefire was resorted to, the two nations could not live in peace. Economic situation in both the countries was deteriorating fast. Meanwhile a difficult year began for both countries after the heavy losses in men and material. Both the countries wanted to resolve the Kashmir issue through

negotiation and thus Tashkent declaration was signed between L.B. Shastri and Ayub Khan of Pakistan called in Moscow on 10.01.1966. In accordance with it two countries agreed to restore peaceful relations and to settle their disputes peacefully; to armed personnel to the position they held prior to 1965 war. In spite of an agreement there was violation of ceasefire line by both the countries as in Pakistan's view question of Kashmir was not settled and wished to resolve it through international assistance. Where as, India maintained that Kashmir issue was settled, the year ended in stalemate

Pakistan's war with India proved damaging to the unity of country and people and underlined the divergencies between the East and West wing. Political instability and poor domestic harvest and isolation from the centre further disenchanted the people of East Pakistan. Thus a campaign for regional autonomy gained momentum where the East Pakistan specially the urban areas appeared to be moving in a direction entirely contrary to their official policy. For all the illwills, Pakistan blamed India for interfering in her internal affairs by instigating Bengalis for a separate state. Relations between the countries remained unchanged. Fulfilling the promise of holding elections to restore democratic institution in the country, President Yahya Khan announced the Pakistan election. Legal frame work for

the allotment of seats to East Pakistan, and to North West frontier province was done according to 1961 census, which laid down certain basic principles which were to be adopted in framing Pakistan's next constitution, which ensured Independent territorial integrity and national solidarity of Pakistan. (8)

Elections were held in East Pakistan on 7th December and to the provincial Assemblies on 17th December which was delayed due to devastating flood on November 12-13 killing many and, several thousands were made homeless. The central elections resulted in overwhelming victory of Sheikh Mujeeb Rehman's Awami league East Pakistan winning 151 out of 153 seats and Mr. Bhutto's Pakistani People Party obtaining 81 in the West consisting of Punjab Singh and North West Frontier Province. Thus the victory of Sheikh Mujeeburehman's Awami league was clear endorsement not only of his popularity in the East Pakistan but of his well known six points demanding virtual economic and political autonomy. The elections gave a clear mandate to the Awami league which wanted to form a federal form of government and offering near independence to East Pakistan, which Mr. Bhutto's Pakistan People Party did not want as they had always emphasized on centralized

economic management, control of Defence and other major industries in the hands of President.

"The Election result had dramatized the East West situation. The serious flood which lashed the Eastern Pakistan, played also an important role in showing inefficiency of the government. While providing relief to East Pakistan". (9)

A new constitution was to be hammered out by the elected members of popular government which was formed at the centre, but division broke out among the two parties led by Sheikh Mujeeburehman and Z.A. Bhutto. On the crucial question of division of power between centre and Provinces. Sheikh Mujeebur Rehman and his supporters pledged themselves to remain faithful to the mandate given them by the people based on the now famous six points. (10)

Negotiation between Sheikh M. Rehman and Mr. Bhutto could not reach a consensus. Mr. Bhutto asked Awami League to adopt a more flexible attitude, as and all demands could not be fully accepted. Talks which continued for three days but consensus could not be reached, Awami league leader Sheikh M. Rehman claimed that as a leader of the majority party, he had the right

to form a new government. Two leaders tried to woo the people by organising mass meetings. Z.A. Bhutto called for a postponement of National Assembly at Lahore so as to give more time to reach a reasonable understanding. This led to violent reactions all over East Pakistan and loss of life through rioting. Popular uprising began in East Bengal when President postponed the National Assembly instead of transferring power to the majority party. As the infighting broke out several thousand East Bengalis crossed to India, particularly Hindus who were being brutally killed by Pakistani troops. India at first adopted a cautious, though sympathetic attitude towards East Pakistan crisis. The Indian Parliament unanimously passed a resolution of sympathy and solidarity with the people in East Pakistan.

As the infighting broke out several thousand East Bengalis particularly Hindus crossed to India where they were provided with humanitarian assistance. Meanwhile Awami League began to direct all its legal work and economic life in the name of Bangladesh.

As the uprising became more grave Mr. Bhutto made a Radio announcement on 6th 1971 March to the Nation "I will not allow a handful of people to destroy the homeland of million of Pakistanis".

Inspite of several attempts by the government to control the situation it could not be turned fruitful. On 25th March Pakistani army launched a massive security operations in East Bengal and Sheikh M. Rehman was seized and removed to the west wing. There was mass flow of asylum seekers specially Hindus who had fled from East Pakistan for fear of being killed by Pakistani troops.

International situation turned out to be such that Washington was supplying arms to Pakistan. China was already favouring Pakistan which gave a threat to India's national security. To counter Washington-Decca - Peking allaince India signed, on 9th August 1971 a 20 year Treaty of friendship co-operation with Moscow.(11)

Pakistan described the treaty as a pact of aggression against Pakistan and detraction from the policy of Non-alignment. Postponement of national assembly and the unlikelyhood of the achieving in full the six points the uprising remained the only way of achieving ultimate aim. In the absence of an political settlement, law and order situation apeared fully to justify the use of force. East Pakistani issue took a new turn when two Kashmiris from India hijacked an

Indian airlines plane and forced it to land in Lahore. Indian Plane was blown up when their demands were not met by Indian authorities. Relations between the two countries strained and India banned flights by Pakistan civil and military air craft over India. Indian Parliament passed a resolution declaring whole hearted support for the anti government forces in East Pakistan. Soviet President requested the Pakistani President Yahya to put an end to the repressive measures and blood shed in Pakistan. China with whole hearted support to Pakistan declared in a message to President "that the unity of the people of the East and West provides the basic qualities for Pakistan to attain prosperity and strength . Thus involvement of super powers became more strong.

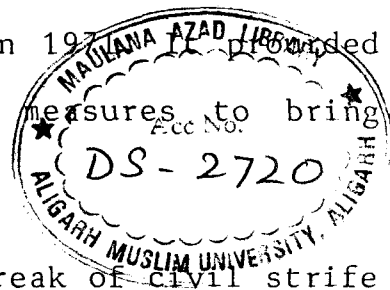
Mrs. Gandhi in order to gain support for her cause of East Bengalis paid a visit to several West European countries including U.S.A. Though the International community was in general willing to increase the amount of assistance for the relief and rehabilitation of the anylum seekers but was not willing to condemn the brutal killing by the Pakistan authorities. When no solition to the Bangladesh problem appeared & the number of asylee who had fled to India increased to a million a day as

as reported by foreign press, and World powers confined themselves merely to verbal sympathy, India accelerated the training and arming of Mukti Bahini the freedom fighters from East Bengal.

As Indias assistance increased border incidence on the frontier between Indian and East Pakistan eacated into war. The war lasted exactly two weeks confined to the eastern front, with the creation of new state Bangladesh. On 6th December 1971 India recognised Democratic Republic of Bengladesh, later Pakistani rersistence in East had collapsed and U.N. clasefire was reached on 17th December.

After the December war India worked out for a creation of an envoirement which would promote securities of the two countries Mrs. Gandhi signed a friendship treaty will Bangladesh similar to the friendship treaty of. Soviet Union 1971 provided mutual consultation and effective measures to bring peace and security. (12)

Immediately after the outbreak of civil strife in East Pakistan a U.N. humanitarian effort for the relief of East Pakistanis refugees in India was initiated by Secretary General following a request made by the Government of India. 175\$ million were prourded for an emergency basis to promise medical supplies and other essential itesm.



U.N. recognized that the solution of the problem lay in the voluntary repatriation of the East Pakistan refugees. It was specified by the Secretary General in his appeal. That relief work could not be carried out smoothly the High Commissioner for refugees reported the number refugees were increasing and that the gap between resources and need has widened despite the generosity of the International Community. High Commissioner further remarked "Voluntary repatriation was possible only when supported by, in principle, by both governments, however this could not be implemented unless the host country and the country of Origin arrived at an agreement, which was not yet the case. The refugees would only return in maximum numbers when they were convinced that real peace and security prevailed in their country" (13)

India liberally granted political asylum to oppressed people of erstwhile East Pakistan who were forced to take political refuge in India. Indian action of granting hospitality and political refuge was viewed as an intervention in Pakistan's internal affairs. India provided assistance in provision to 1 and 3 of Draft Declaration adopted by Human Rights Commission, furthermore Article 31, 32, & 33 of refugee convention of 1951 states "asylum must be granted to those persons if return to or remain in a territory where there were well founded fear of persecution endangering their

lives or physical integrity" "The influx of asylee from Bangladesh was due to Poltical Crimes and the asylum seekers concerned, were not guilty of violating the purposes and principles of United Nations Rather, Military Regnies of Pakistan was guilty of violating the purposes and principles of United Nation" (14)

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CHAPTERR - III

RIGHTS AND DUTIES OF ASYLEE

CHAPTER 3

RIGHTS AND DUTIES OF ASYLEE

All states enjoy territorial sovereignty and regulate the entry and exit of aliens through their territorial supremacy. No alien can claim a right to enter any foreign territory unless they are in possession of appropriate travel documents. States have retain an absolute discretion in the matter of ~~reception~~ and entry of foreign national, which is indicated in their laws, regulation, excutive orders and principles.

Havana Convention on the status of refugees 1928 provides in Article 1 : "States have the right to establish by means of laws the conditions under which foreigners may enter and reside in their territory".

The Asian African legal consultative committee in its final report on the status of refugees recommended : "Admission of aliens into a state shall be at the discretion of that state, and a state may prescribe conditions for entry of aliens into its terriotory".

When a person acquires the status of Asylee i.e. admitted in the foreigner country he has no right to

receive asylum. States have competent power to grant or refuse asylum. It is difficult for stateless persons or political refugees to have appropriate travel documents and even do not possess clearly defined rights.

Thus it is of great importance for all states concerned to have some regularization of the status of asylee and designate an international authority to act as his representative. A series of convention were drawn up between 1922 to 1951 both at National and International levels to sought out the problems faced by aliens. Several bipartite and multipartite conventions were drawn up, provision of granting identity and travel documents such as Nansen passport, employment, education and Social assistance were taken up. At International level such rights of aliens were condified in the convention relating to the status of refugees of 28th July 1951 and the protocol 31 Jan. 1967 called Magna Carta of refugees. These conventions along with several others, Convention ~~tries~~ to ensure the asylee certain fundamental rights in country of refuge.

Every state excercises territorial supremacy over all persons on its territory and states have discretionary power to admit or not to admit persons on in its territory. Thus the right of asylum is certainly possessed by the state and the alien can not demand it.

He can enjoy the asylum when granted. International law does not confer rights on individuals and practice of states has not admitted right of individual to asylum.

The discussions in the previous chapters were concerned with the right of the individual to be protected against the persecution of the state from which he has fled, and Protection is provided by the mere fact of territorial supremacy of the state of asylum.

However, the main problem arises with regard to the relationship between the individual and the state of potential refuge. It is no doubt that the individual has no right of asylum against that state. No International treaty entitles individuals to claim asylum from state, and international law does not provide individual with the provision of right of asylum.

Inspite of this, some municipal constitutions have recognized a right of individual to asylum, the for instance, the Constitution of Albania Article -36 1946; Constitution of USSR 1936 Article 129; Ukraine Article - 128 1837; Yugoslavia Article - 31 1946. These municipal laws grants asylum to persons who actively champion the same interests as of the state, but persons who oppose

political views are implicitly denied the protection of which they are entitled.

French constitution of 1946 provides in its preamble : 'Any person who is being persecuted because of his activities in the cause of freedom has a right of asylum in the territories of the republic.'

Constitution of several Latin American countries offer the right of asylum to those prosecuted for political reasons. For instance, Constitution of Cuba 1940 Article-31, Guatemala 1945 Article 26; laws of Ecuador on Aliens 1938 Article-3.

These constitutional provisions limit the powers of the government with regard to exclusion, Surrender of political offenders and expulsion. But municipal laws are not wholly satisfactory and they do not remain same, States alter their constitutions at will, and the interests of nationals are more important for them than the aliens right.

Thus these municipal laws are not legally binding, and therefore the rights of individuals can not be guaranteed in the matter of admission, extradition and expulsion, unless the states recognise the right of asylum with such consistency that is accepted as a

general principle of law recognized by civilized states.

As the alien enters the foreign state he at once falls under the Territorial Jurisdiction of the state. He is responsible of for all his acts he commits in the territory.

Four principal opinions have been held regarding the admission of aliens into countries other their own.

- (a) A State is under duty to admit all aliens
- (b) A state is under duty to admit all aliens, subject to the qualification, that is entitled to exclude certain classes such as drug addicts, persons with diseases and other undesirable persons.
- (c) A state is bound to admit all aliens but may impose conditions with regard to their admission,
- (d) A state is fully entitled to exclude all aliens at will. (1)

The rights of aliens in the receiving state which need to be protected are :

- 1) Rights concerning admission of aliens :
International law permits every state to close

its territory to aliens, or to admit them only on conditions, for instance states generally admits tourists, students. distinction is also made between such aliens who are merely travelling and stay, therefore, for a short period. Where as some individuals take up residence either permanently or for some length of time.

A sovereign state may prohibit entrance into its territory either to all foreigners in general, or to certain persons in certain cases or for certain purposes as the welfare of the state may require. According to Oppenheim "Apart from special treaties of commerce, friendship and the like, no state can claim the right of its subject to enter into and reside on the territory of foreigners state. The reception of aliens is matter of discretion and every state by reason of its territorial supremacy competent to exclude aliens whole or any part of its territory"(2)

In the views of Hack-worth "In the absence of treaty obligations a state is under no duty to admit aliens into its territory. If it does admit

them, it may do so on such terms and conditions as may be deemed by it to be consonant with its national interest".

Similar views were expressed by the U.K. delegate in General assembly of United Nations during discussion on Article 14 of Universal declaration on Human rights "No foreigner could claim the right of entry into any state, unless right was granted by treaty".

Some states regulate the entry of aliens by means of legislative enactment. In UK and USA and in several other state, the right to admit or deport refugee has been regarded as an incident of territorial sovereignty. British practice indicates that apart from treaty obligation a state has a right to exclude alien or particular category of foreigners, if it considers their presence opposed to its peace and order, or to its social and material interests.

In a decision of judicial committee of privy council in MUSGROVE VS CHUGTEONG TOY, Case, it was held, that quite apart from the existence of a constitutional power of exclusion, the aliens has no right in international law or municipal law to claim admission. It was further declared" as to the plaintiff's right to maintain the action he can do so only if he can establish that an alien has a legal

right, enforce-able by action, to enter British territory. No authority exists for the proposition that an alien has any such right" (3)

In USA the question of admission of aliens is governed by the provision of the municipal law. Emphasising this point the US supreme court stated : "It is an accepted maxim of International law, that every sovereign nation has the power as inherent in sovereignty and essential to self preservation to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe" (4)

However,, in case of political refugees the immigration laws of the state are often waived off. The Alien Act of 1905 of United Kingdom, explicitly exempted political and religious refugees from the main excluding provisions. Above Acts para 3 provides that persons coming from politically disturbed countries, should be given the benefit of doubt.

United states immigration laws exempt religious and political refugees from bringing official documents of the state of Origin it was impossible for them to obtain it before 1936. United States Secretary of State

the American policy on the subject states:

(It is the traditional policy of the Government of U.S. to grant refuge in its territory to persons whose lives are believed to be in Jeopardy as a result of their political activities in a foreign country. Such persons as political refugees; to U.S. applying for admission refugees are customarily admitted for a reasonable period, under a liberal interpretation of the immigration laws.'

French laws regarding political refugees have ~~continued~~ continued this policy Since second World War, emphasizing this point Lord Henesson speaking for the government in 1948 declared. 'No case has ever been brought to our attention of any political refugee being denied the right of asylum and we will never turn back or deport a political refugee. '

These countries have openly admitted leading political dissidents from East European states without requiring usual formalities. In spite of the liberal attitudes of states in granting admission to political asylees, quantitative restriction on entry of aliens have never been waived, thus large group of political refugees are not preferred admission in the same way a political offender or fugitive who comes as an isolated individual.

It is clear that, inspite of special provisions which are drawn up for the admission of aliesn, there is no customary rule which examines the reception of alines. A rule which is accpeted by all sovereign nations is . Prime interest of all nation is the security of their nationals and the welfare of the state. Thus an alien can not claim an entry into a foreign state if his admission is to contrary to the interest of the state.

TREATMENT OF ALIENS AFTER ADMISSION

a) RIGHT TO NON-DISCRIMINATION :

State possess absolute descretion in the matter of admission of aliens, no state can in normal times keep out all aliens from its territory. Such a practice would be highly detrimental to its own interests and be resented by other states, who would refuse admission of nationasl of such state in their territories.

Some states have adopted policy of excluding aliens on racial grounds such as the immigration laws of Australia and South Africa where persons of Asiatic Origin were considered

to be prohibited immigrants. The quota system together with barred zone provision in United States is based on the ground of race.

Although legally speaking no objection could be made regarding the entry of aliens by a state, and there could be any reason for excluding aliens by a state, but refusal of entry by reasons only of race, religion or sex or colour has been condemned by all civilized states as it is not consonant with the concept of human dignity. The U.N. charter and the Universal Declaration of Human Rights has affirmed the principle that human beings shall enjoy fundamental freedom and rights, without discrimination to race, religion, or country of origin.

The Asian African legal consultative committee on states of aliens has recommended in 1961 in Article-3. "A state shall not refuse to an alien entry into its territory on the grounds of his race, religion, sex or colour".

According to Hyde such practices are "tokens of arrogance that defy explanation and produce resentment on the part of states whose nationals happen to be singled out for exclusion".

Once an alien is admitted into a territory of state, he becomes the subject to the laws of the state in the same way as citizens are. Thus an alien expects a quality treatment under the local law.

Valuable rights of an alien which need to be protected are the rights concerning his personal freedom and the means of safe guarding these freedoms.

b) It is generally recognised both under International law and in the provisions of treaties and conventions that a foreign national must be fairly treated whether it be on the basis of traditional concept of minimum standard of treatment, or on the basis of fundamental human rights as acknowledged and recognised in the United Nations Declaration of Human Rights.

The standard of treatment of aliens, which is generally followed is, they are to be treated in the same way as citizens are treated. There should be no discrimination between aliens and citizens. The police must not arrest him without just cause, courts of Jurists must treat him Justly and in accordance with law.

Therefore international minimum standard must be followed for the treatment of aliens. This view was supported by majority of states, and later it was affirmed in United National General Assembly Declaration on Permanent sovereignty in 1962. it was also recommended by Several tribunal claim commissions.

In the Neer and Neer (U.S.) V United Mexican States 1926, commission "That the propriety of Government acts should be put to test on International standards, and that treatment of alines in order to consititute an international deliquency, should amount to an outrage, to bad faith, to wilful neglect of duty, or to insufficiencely of governmental action so far short of international standards that every reasonable and impartial man would readily recognize its insuffecieny" (4)

It will thus appear that state can discrimnate between an alien and a national of its own state provided the treatment should not fall below the accepted international standards.

Aliens are also exempted from any compulsory obligation to srve in the armed forces of the country

in which they reside unless the state to which they belong consents to waive the exemption.

"As the alien remain under the jurisdiction of the state in which he stays and is responsible to it for all the acts he commits on its territory. He is also responsible for the illegal acts he commits during the period when the territory is occupied by the enemy" (6)

"An illustrative case is that of the De JAGER V THE ATTORNEY GENERAL OF NATAL : De Jager was of the South African Republic, but a settled resident of Natal when the South African war broke out. In October 1899 British forces evacuated that part of Natal in which Washbank where he lived, is situated and it was occupied by the Boer forces for some six months. He joined them and served in different capacities until March 1900, when he went to Transval and took no further part in the war. He was tried in March 1901, convicted of high treason and sentenced to five year imprisonment and a fine of dollar 5,000 or failing payment therefore, further three year imprisonment" (7)

Along with the treatment of aliens in the foreign state with dignity are other closely related personal

right such as freedom to practice religion, right to have protection of the executive and police authorities, access to courts, freedom from arbitrary arrests, right to have legal assistance.

Some authors are of the view that freedom of speech and expression should also be protected but opinions of jurists are not uniform on this aspect as they consider it an intervention in internal affairs. Closely connected with freedom of speech and expression are the political rights and right of suffrage. Generally aliens are prohibited from participating in the political life of the host state and therefore aliens are not entitled for any political right or right of suffrage.

Oppenheim observes, that even before the first world war when there was a tendency to treat admitted aliens more and more on footing of equality with nationals, even then, aliens were not granted political rights.

Along with these rights to aliens, which are to be protected by his home state, certain privileges were granted to aliens as a result of certain treaties known as capitulations between some Asian and African and European countries. These

treaties enabled aliens not to be tried by the courts of Asian and African states but by their own courts.

Such treaties reminiscent of colonial days came to an end with independence of Eastern states and with the growing consciousness of right of self determination. Japan ended the extraterritorial Jurisdiction in 1899, Turkey in 1914, Persia in 1928, and China in 1943.

c) RIGHTS TO PROPERTY :

Just as states have competence to prohibit or allow aliens to remain on its territory, and to treat every them with certain considerations, they must be afforded with protection to their property. Every state by law of nations is compelled to grant aliens equality with other citizens of his state.

Jurists and writers on International law are of the view, that every state has the liberty of granting or refusing to foreigners, the power of possessing land or immovable property within its territory and that no state has a right to complain if a state does not permit aliens to have such right.

However, state practices reveal that in general states permit aliens to hold property and such property

rights are governed by municipal laws of the state concerned. Every state has its own rule, for instance in USA no person who is citizen of USA or has not declared his intention to become a citizens can acquire or own any land in any of territories of the US. Where as in Burma, Sri Lanka and India, aliens are permitted to hold property, Japan permits foreign ownership of real property on the basis of reciprocity, some states make distinction between resident and non resident aliens in the matter of acquisition of property.

The practice of states are not uniform in this regard, so states have often entered into bilateral agreements in order to safeguard the rights of their citizens. For instance Article VIII (1) of Treaty of Friendship Commerce and Navigation concluded between Italy and US in 1948, provides for the acquisition of property.

d) RIGHT TO TAX ALIENS :

it is well recognised that a state by virtue of its territorial sovereignty is competent to levy taxes

on income, property and gain transactions of asset and property with in the territorial limits of a state. Unless possessing diplomatic immunity, resident aliens are not exempted from civil taxes and custom duties.

e) RIGHT TO RETURN :

Repatriation or return of asylee to their country of origin or former habitual residence is the permanent solution to their problem. This right has been recognised under Article 13(2) of universal declaration of Human Rights 1948 which provides "Every one has the right to leave any country including his own, to return to his country". One of the main functions of the International Refugee Organization was to encourage and assist in every way possible their early return to their country of origin. According to oppenheim "Since state holds only territorial and not personal supremacy over an alien with in its boundaries, it can never, in any circumstances prevent him from leaving its territory, provided he has fulfilled his local obligations, such as payment of rates and taxes, fines, private debts, and the like" (8)

"Right to return has also been recognized in the Preamble to the declaration on Territorial asylum 1967"(9)

It must be noted, that right of repatriation should be voluntary on the part of the refugees and forced return may amount to expulsion which is prohibited under Article 32 of 1951 convention relating to the status of refugees, (10)

f) POWER OF EXPULSION AND DEPORTATION OF ALIENS :

States have absolute discretion under international law to admit aliens into its territory. It is the territorial ~~Supremacy~~ ^{of} the state. to decide, as to whom and in what circumstances it would expel or deport any foreigner from its territory. Each state has its own power to decide the length of time and the condition under which it would permit an alien to remain on its territory.

Thus international law gives sovereign nation the right to expel and deport un-wanted aliens. This principle is generally accepted by all civilized nations . . . certain humanitarian consideration are kept in mind before expelling and deporting the alien. States enjoy wide latitudes as to grounds of

expulsion. It must be done in a reasonable manner and without unnecessary injury to the alien, states must not abuse their right to expulsion or proceeding in an arbitrary mannaer.

States have high appreciation of individual liberty and dignity and thus avoid explusion of alien in an arbitrary manner. Keeping this humanitarian view, British government till 1919 had no power to expel aliens without the recommendation of the court except during war or immenient danger. person residing in the state for some length of time and has established a business there, must be given enough time to wind up his interest

It is also necessary that detention prior to expulsion should be avoided unless the alien concerned refuses to leave the state or is likely to evade the authority. State must ensure that aliens under expulsion order is not exposed to unnecessary damage of dignity prior to expulsion. An alien should not be deported to a place where his life or freedom would be threatened on account of his race, religion, nationality or political beliefs.

States have rights to expel alien from their territory but the reasons for the expulsion must be

known to the aliens. Article 30 of the international law institute prescribe :

"The act of decreesing expulsion shall be notified to the expelled invididual, the reason on which it is based must be stated in fact and law".

Thus the state of the expelled alien can enquire about the reason of expulsions of its national. In case the procedure of expel alien are harsh or unjust then his government would be justifying the act through on the status of aliens of Debruary 20th 1928, Article 6 provides "that state may expel alien for reason of public order or safety". However at the same time the provisions which apply to expulsion of an alien must no be arbitrary.

"In Buffolo case, where Italy has complained against Venezula for expelling an Italian Buffolo who had written an article critisizing the local administration It wa sheld by umpire that although state had a right to expel an alien, the power should be person excercised only on extreme case with least dipreciation to the person is property of the alien, Umpire further held that the expelling state should be able to justify the expulsion order before an arbitrator" (11)

"In a similar case in 1934 "Yugoslavia expelled great number of Hungarian subjects as a resprisal against alleged complexity of Hungarian authority in the activities of the Terrorists. The explained that, in view of unemployment the persons in question lived in Yugoslavia under periodically renwable persuits only .

In another case in 1940 "US circuit court of appeal refused the request of the government for the deportation of Polish couple to Poland than under German Occupation, on the ground that in these circumstances, the deportation would be inhuman and shocking to the senses." (12)

Expulsion of alien must be based on just causes. International law does not provide any detailed rule regarding expulsion but grounds on which expulsion and deportation are genrally carried out are prescribed in municipal laws, regulations and in executives order promulgated by various states.

usually states follow executive authority in practising this principle. As states have ample reason to expell an alien, from its territory, inspite of this every things depends on the merit of individual case.

It must be borne in mind that there is a broad difference between the right to exercise a power and rightful exercise of power. There is an difference between expulsion of an alien in times of war, and in Times of peace. Most common reason given by a state for expulsion are the reasons for national interest, security and public order.

The institute of international law in Geneva in 1892 adopted a body of 41 article concerning the admission and expulsion of aliens. Article 28 enumerates nine just causes for expulsion in time of peace. Many of these such causes as such conviction for crime are said to be just causes, but others are doubtful. A state which expels an alien hardly admits for having a just cause for expulsion. An alien being a guest in the foreign land and under what condition he makes himself objectionable to his host cannot be answered.

Thus the expulsion and deportation act as a heavy punishment and causes much hardships. The person who is expelled is uprooted from his home and is left with no lively-hood.

In modern times, with the advancement of true constitution nalism guaranteeing individual liberty and freedom

of opinion and speech, states do not readily resort to this step. Thus expulsion of aliens for political reason has become less frequent.

In the legislation and judicial process of many countries there have been an increase reluctance to sanction the expulsion of political refugees to countries, where they might be exposed to persecution. As a rule, political refugees are not expelled to countries where they could be persecuted for their political views. In the case of "Rezausmer" (1911) court of appeal in England refrained from recommending expulsion on the ground that the dependent if send back to Russia would be punished for desertion.

Another view on expulsion of political refugees might be inferred from the judgements in 'REX V GOVERNOR OF BRITXTON PRISON EXPARTYSARNO 1961'. The court would interfere if there were an apparent misuse of power of expulsion to enforce the return of the real genuine political refugee to the country of his origins.

The position of USA is also similar and it have strict laws regarding the expulsion of refugees. In case of "US exrel. Hudak V" uhl 1937, the court pointed out "deportation of alien is not a subject for review

by the court, unless, where it is made clear that deportation to the country named in the order would almost certainly mean death to the alien, guilty only of political offences, and even then interference could only be justified upon the ground that secretary of labour was guilty of such gross abuse of discretion as to raise a question of law". (13)

The court also found there has been abuse of discretion regarding the deportation of political refugees for instance in "Rs BURGOA CASE 1946". Where an order of deportation was issued against a Spanish Republican refugee, although the later had made arrangements for voluntary departure. In number of other cases, courts have given the impression that they consider that genuine political refugees should not be deported to the prosecuting state.

In two cases "US Exrel Weinberg V Schlotfeld" 1938 and "US Exrel, Boracy V Schlotfied" 1940 it was held that deportation of Jews to countries threatened or occupied by Nazi Germany would be in-human punishment.

The present policy of USA regarding deportation of political refugees was explained as follows :

"Persons who satisfactorily establish that they are political refugees are given every opportunity by

this country to depart from the USA and adjust their immigration status, or if they desire permanent status in this country or to effect departure from US to some other country before resort is had to institution of deportation proceedings".

In France and Holland Political asylee as rule are not deported to their country of origin. As a matter of policy refugees are not sent back to their home state. The Treaty of Montevideo of 1936 provides in Article 12 "Discontinuance of benefits of asylum does imply authorization to place a refugee in the territory of the pursuing state".

But such binding legal provisions are exception rather than the rule. In many cases states reserves the right to expell refugees to states other than the country of origin.

Some of the significant treaties recommend that asylee should not be expelled. Convention on international status of refugees (1933) ratified by eight states - Article 3 of which provides "Refugees who have been authorize to reside regularly on the territory of a contracting party should not be expelled".

A treaty concerning the legal status of Russians American refugees 1928, recommends political refugees should no be deported.

Various resolutions of the Assembly of league of nations were also called. In 1933 assembly gave its earnest appeal to governments not to expel asylee before they have obtained formal permission to enter an adjacent country. But the assembly do not impose any obligation on the governments.

It is therefore, expedient that except where aliens activities are so prejudicial to the security of the state that in the national interest of the country need not side itself with an alien. Power of expulsion should not be lightly excercised specially in the case where a person has been staying for a long period and has dug his roots deep into commercial or economic life.

The modern theory and practice of nations shows that expulsion of foreigners is justifiable only in the circumstances where his presence is detrimental to the welfare of the state.

For instance in case of "BEN TILLET" between Great Britain and Belgium March 19 1898. A British subject

was expelled from Belgium for Organizing a strike in 1896. Giving an opinion on the above case Judge explained.

"A state possess the general right of expulsion but, expulsion should not only be resorted to, in extreme instances and must be accompanied in the manner least injurious to the person affected. Expulsion order must be accompanied with explanation of reason and Justification of conduct of an alien" (14)

The practice of states show that in cases of arbitration and unreasonable expulsion of resident alien and in cases of hard-ships, the home state of the aggrieved alien have not shown in taking up their cause through recognizing at the same time, the right of receiving state to order expulsion of foreign nationals from its territory.

Emphasizing the similar views United States secretary of state in Caracas in 1907 declared : Right of government to protect its citizens in foreign parts against harsh and unjustified expulsion must be regarded as a settled and fundamental principle of International law. It is no less settled and fundamental that government may demand satisfaction and indemnity for expulsion in violation of the requirement of the international law.

The Asian - African legal consultative committee taking the state practice in consideration has recommended that :

1. A state shall have the right to order expulsion or deportation of an undesirable alien in accordance with its local laws, regulations and order.
2. State shall, unless the circumstances warrant otherwise, allow an alien under orders of expulsion or deportation or reasonable time to wind up his personal and other affairs.

States through diplomatic channel ask reasons for the expulsion of their nationals specially in the case where there is doubt of unjust or unsatisfactory satisfaction. For instance United Kingdom obtained from Nicaragua in 1895 and indemnity for the expulsion of 12 British subjects who have been arrested & expelled for alleged participation in Mosquito Rebellion.

As pointed out when ever treatment of aliens constitutes violation of International customary or treaty law danger or injury is caused to the person or property he. Can approach his home state which the alien state is a National has a legal right

to make diplomatic protest against the state responsible for injury and can for repatriation, but, before a state presents an international claim, on behalf of one of its national, the envoy has to make sure that the aggrieved person has exhausted all the remedies which may be available to him under the municipal laws of the state.

'TINOCO CONCESSION CASE' (1923) relating to principle of exhaustion of local remedies state;(14)

The principle of exhaustion of local remedies is a well accepted doctrine of Int. law and is based on the hypothesis that diplomatic intervention in the form of presentation of International claims is an extra-ordinary remedy available in respect of inter-nationally wrongful conduct on the part of the state for breach of its acknowledged duty under international Law. If a state itself provides appropriate apology for the harm or injury suffered by an alien the state cannot be said to have failed in its duty until the local remedies have been exhausted and the alien has failed to get adequate redress for the injury suffered. For instance, in many countries, it is possible to challenge the action of the executive branch of the government in a court of law on the

the ground that, the latter was the resident of Greek government in exile could not be done" (15)

The law relating to protection of asylee from expulsion finally culminated in the international covenant on civil and political rights, 1966. Article 13 of covenant provides.

"An alien lawfully in the territory of a state party to the present covenant may be expelled there from only in pursuance of a decision reached in accordance with law, and shall except where compelling reason of national security, otherwise require be allowed to submit the reasons against his expulsion and to have his case reviewed, and be represented for the purpose before the competent authority or a persons especially designated by competent authority"

Thus it may be understood, in the admission, exclusion and expulsion of aliens a state is under no duty in the absence of treaty obligation to admit to its territory. If it does admit them, it may do so on, such terms and conditions as may be deemed by it to be consonant with its national interests. Likewise a state may deport from its territory, aliens whose presence, there, may be regarded as undesirable. These are the incidents of sovereignty.

ground that the executive action is a violation of law of state. In countries like USA and India where aliens are entitled to some of fundamental rights under the constitution the law can be challenged.

It should be mentioned if a claim is preferred, it should be done with as little delay as possibly after the local remedies have been exhausted.

If an alien refuses to leave the territory voluntarily or after having left, returns without authorization, he may be arrested, punished, and forcibly brought to the frontier. In this regard deportation takes place normally to the country of Origin.

In a case between "USA Exrel Hudak Vs Uhl" 1937 where the court held that Petitioner, a native of Poland was not entitled to insist on being deported to Canada.

During second world war the courts in USA in some cases, ordered the delivery of deported persons, nationals of the countries under the belligerent occupation to the authorities of their governments in exile.

In a case between 'MORAITIS Vs DELENEY' 1941-42 deportation of a Greek subject from USA to England on

It would thus appear that practices of states is not award a right of individual to asylum except, in the matter of non-extradition of political offenders. Thus, there is lack of enforceability of rights which are conferred upon an asylee.

According to Felice Morgestern there are three possible ways of enforcing rights on asylum seekers. "First alternative is the individual himself should be able to vindicate his rights in International sphere. But this is not possible as the municipal laws of state are not obligatory in International community and individuals have to give procedural standing with in the frame work of treaty and compulsory arbitration between the state of which they are the nationals and foreign state concern.

It is, whether in the present state of international law. This method would prove satisfactory.

Second alternative method for the enforceability of rights could be, when states may be able to protect refugees in some circumstances. It was suggested by commission of the institute international law which dealt with the question of refugees in 1936 that refugees should be given diplomatic protection by

the state on whose territory they are resident. This principle is useful to some extent within the limits of its applicability, but the main problem is the rights of asylee against the state of potential refuge. In most of the cases asylee needs protection and a permanent residence in the state of refuge.

It is open to doubt, whether the legal consciousness of states is highly developed that may be relied upon for the enforceability of rights in the application of which they have no direct interest, and which can only adversely affect their relations with other states.

Third alternative is the rights of individuals which may to be enforced by an international agency. In 1936 Several members of Commission of the Institute of International law concerned with the status of refugees suggested that the rights of refugees should be looked after by an international authority or organ so that the rights can be protected and enforced, but no strong steps could be taken up by the commission, as the proposals were weak. Since then several agreements have come into existence who have tried their best to provide true right of asylum to individual. (16)

There has been enormous increase in the number of asylum seekers after the two world wars. The problem of granting asylum has assumed a disturbing proposition because of the increase in the number of asylum seekers throughout the world in the 20th Century and today it has become a matter of acute international concern. As no recognised status is given to them in any state, and even they have no right in customary International law, This led to a situation which made it necessary to take some measures that would give them basic rights to which they are entitled to as human beings.

It was only after the first world war that the status of asylum began to be regulated by treaties and functional agencies which were created for their proliferation. At first few aspects of refugee status were taken such as issuing them travel documents. However, later constitutions became wide in scope to cover regulation of their legal status in the country of asylum.

"Fundamental rights of men gained formal recognition only at the end of world war II, such as charter of UN and various convention on human rights. A French proposal to the third committee of the General Assembly of the UN on 3 November 1948 it was stated

that the UN should be authorized to enforce the right of asylum. The proposal assumed that article 14 of the the universal Declaration on Human rights would guarantee the individual a right of asylum. As such, a right is of international nature, the responsibility for enforcing should rest with international community as a whole, represented by UN. The International Organization would fulfil the second purpose in co-ordinating the novements of asylee, so as to prevent heavy burden of asulum seekers from failing on any one State. In a real sense, then, that International Organization would act in the interest of the victims of persecution. This proposal was not accepted by majority of nations as they were not ready to grant the individual a true right of asylum enforceable against the state of potential refuge. Thus, member states were not ready to give International organization the sole power and authority to provide asylum to persecuted individual.

Several international arrangement have come into effect, which provides the general rights to the refugees, significant among them are the conventions relating to the status of refugees of July 28 1951 and its protocol of 31 January 1967 which constitutes the most

important codification efforts of the rights of asylum seekers at International level.

Inspite of such efforts of the international organization to the protection of rights of asylee, the protection of human rights is still at a rudimentary stage. Universal declaration of human rights does not create legal rights of obligations of covenant which will have legal effect. The real solution to the problem of asylum lies in the elimination of conditions which create refugees.

DUTIES OF ASYLEE :

Rights which are provided to asylum seekers are liable to certain restrictions and it is the duty of asylee to obey certain rules. Along with this, states have competence to grant asylum to political asylee and the right has to be exercised consistently, with states obligations to see that its territory is not used for activities detrimental to other states. National interest and security of the state should not be damaged at any cost.

According to Oppenheim. "Right of asylum is nothing but the competence of every state to allow a

prosecuted alien to enter, and to remain on, its territory under its protection and there by to grant him asylum. Such fugitive aliens enjoy the hospitality of the state which grants him asylum but it might be necessary to place him under surveillance or to even intern him at some place in the interest of the state which is seeking to prosecute him. For it is duty of every state to prevent individuals living on its territory from endangering the safety of another state by organizing hostile expeditions or by preparing common crimes against its head, members of its government or its property". (17)

Thus states must ensure that persons residing within its own territory will not jeopardise the law and order of the country, they will not involve in activities which could be detrimental to welfare of the state. As it is difficult to differentiate between an asylee and a citizen. A duty of vigilance over activities of persons who are granted asylum must be kept, specifically in the case of political refugees, More who have been thrown from power may attempt from a neighbouring state to organize subversive and other type of hostile acts against the government which has ousted them.

The asylee should not forget that the state of asylum has already earned the wrath of the refugee's state by granting him asylum therefore he should not do any thing which may further aggravate the bad relations between the two states. Asylee should not do any thing against the interest of the state. The Havana convention on asylum 1928 Article 2(5) provides "while enjoying asylum, refugees shall not be allowed to perform acts contrary to the public peace".

Further more, Declaration on Territorial Asylum adopted by General assembly of UN on 14 December 1967, Article 4 of which provides 'States granting asylum shall not permit person who have received asylum to engage in activities contrary to the purpose and principles of UN'.

Keeping in view of the above provision Nepalese government warned the Kaampas to surrender their arms and planned to move them from Tibet border to the interior part of Nepal because the Kampas were carrying activities against the Chinese administration in Tibet.

Same can be said about Palestinian refugees stationed in Lebanon who were causing great embarrassment to the government and vis a vis, its,

relations with Israel, Lebanon has been subject to many reprisal attacks by Israel because Palestinian used Lebanese territory for launching sabotage and terrorists activities against Israel.

Thus it is the duty of state of asylum and the asylee to see that the asylee do not abuse the hospitality of the territorial state. Regarding hostile acts of refugees, Although there is no dispute as regards the principle, there is considerable scope for difference of opinion as to what type of activities would constitute hostile acts. In some cases the position is obvious, such as when the refugees organise an expedition or guerrilla activities. These are clearly hostile acts and cannot be permitted. But there are other types of activities where it is difficult to draw the line between the acts which are hostile and those which can be allowed. To this class falls the propaganda activities by political refugees. The determination of such a question would depend largely on the facts and circumstances of each case and upon the attitude of the government concerned. The Anglo-American school of thought tends to deny that there is any obligation on a state to suppress activities by private persons which do not involve in armed hostility or terrorist activity. In other words,

Anto Nelli and Barberi' held that all publications against foreign governments could not be treated as criminal. To hold otherwise, he said,"would mean that persons who espouse the cause of Italian liberty would be held guilty of criminal libel. In the South American states, where granting of political asylum is common, the practice varies from state to state. In some countries refugees have been allowed full freedom not only to organise propaganda but also to indulge in subversive activities against the government of the country from which they had fled." On the other hand, in some states a more strict rule is applied and actions which are considered to be treason, committed by nationals of the state, are not permitted. Amongst Asian African countries, there does not appear to be unanimity on the question of surveillance of political refugees by the state of asylum. The laws of Burma and Ceylon are silent in this regard. The law of Japan does not admit any restriction on such persons. Iraq and Indonesia take the line that restrictions may be placed it if becomes necessary. When a political refugee misuses the hospitality of the host state, India, Ceylon and Japan maintain that he may be deported, but according to Indonesia and Iraq he can be tried and punished just like any other criminal offender. The Arab Republic Egypt considers that the state should

the state is not under any obligation to suppress private propaganda. This view is shared by some authorities in international law, for example, Oppenheim is of the view than.

"The duty of a state to prevent commission within its territory of acts injurious to foreign states does not imply an obligation to suppress all such conduct on the part of private persons as is inimical or prejudicial of the regime or policy of a foreign state. Thus there is no duty to suppress revolutionary propaganda on the part of the private persons directed against the foreign govt.".(18)

According to Van Dyke, the principle that states must use due diligence to prevent the use of their territory as a base for the spreading of propaganda hostile to foreign governments has never in general practice been accepted as law. Jurists, like Fauchille and Calvo, have on the other hand advocated a widening of the duty of restraint so as to include all cases where there exists a threat to the security of a foreign power (19)

"In recent years, there have not been many instances of subversive or propaganda activities organised by political refugees because those who have

sought and been granted asylum in various countries have been more concerned with their own safety and to make a fresh beginning in the new land. Very few of them appear to have any thought of going back since the regimes from which they have fled on account of persecution all appear to be well established. In the nineteenth century, however, the position was somewhat different as the changing regimes in various continental countries often gave the refugees the idea of staging a come back. Generally, the attitude of the Anglo American countries throughout has been to allow a large measure of freedom to all refugees, where as the practice in the continental countries has been more restrivtive.

"There are two old British precedents which might be worth referring to in this connection. In 1803, France complained to Great Britain of seditious publication in the British press at the instance of Royalist refugees and demanded action, but the British Government maintained that the law of nations did not require it. In a series of correspondence in 1852 between Britain and the continental powers, Britain refused to suppress revolutionary propaganda unless it amounted to waging war against a foreign state. Lord Phillimore in the celebrated case of 'King V.

draw the attention of the refugee to any improper conduct on his part, and if he still persists in such undersirable activities, he could be deported, but the deportation should not amount to extradition in disguise" (20)

The principle concerning the grant of asylum in the territory of the state, under international law is, in the absence of treaty obligation a state is free to admit any one it likes, and to allow him to remain there. However, there is no corresponding right in the refugee to demand, that he should be granted asylum by the state on whose territory he has entered. Thus the so called right of asylum is the right of the state, not of the individual however it may be assumed that states must grant asylum, to all individuals in a humanitarian spirit.

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C O N C L U S I O N

CONCLUSION

The newly emerging situation in contemporary international relations is also affecting the sphere of international law. In the second half of the 20th century there has been steady development, and the signing of the U.N. charter opened a new phase in the history of international law, marked by stronger authority of its basic principles and rules on a world wide scale. Progressive development took place in the field of codification and expansion of international law to ensure greater respect for human rights and the humanitarian constituents. This made the international law a more effectiveness instrument both in and outside the U.N.

According to Jean Paul Sartre "Man is free to choose his own destiny but with in a social, economic and political context which imposes a set of restrains and pressures on him, limiting his freedom as much as his human condition. Since the development of international community human beings were under exclusive control of the state, each state excercising total control over its own citizens with in its territory, but this jurisdiction is not absolute, it

is subject to certain limitations imposed by international law.

International law as currently interpreted does not confer the right of asylum to individual, as has been often misunderstood. Question of right of asylum although closely connected with that of Non-extradition of Political offenders is considerably wide in scope. In the first instance it refers not only to the obligation, not to surrender or extradite political offenders but also implies a positive duty to receive them. Secondly it not only covers political offenders, it embraces victims of persecution fleeing from country of persecution. The right of asylum by which a state can accord hospitality and protection to political refugees is widely accepted and practised in International law. A state is under no legal obligation to grant asylum, refugees can not claim it, as a right. Thus according to general international law right of asylum as incorporated, is not the right of individual but of the state. Universal declaration Article 14 states right to seek and enjoy asylum in other country but did not give right to receive them. This declaration is rightly criticised as being some what nominal and not borne out by existing international law. The draft convention relating to the status of refugees 25th

July 1951 and its Protocol of 1967 contains an article dealing with the admission of Refugees.(1)

Taking in their entirety these instruments reflect what at present stage of development of international law, may yet not be customary international law, but which has acquired the complexion of usage i.e. the refugee shall not be returned to a country, where life or freedom would be in danger on the grounds of their race, religion, or political belief and opinion. This leads the way to the adoption of the principle that a state shall not refuse admission to a refugee i.e. that it shall grant him at least temporary asylum - pending his settlement in a country willing to grant him residence if non admission is tantamount to surrender to the country of persecution.

Asylum gains legal significance and value in situations where it involves a principle of extrterritoriality. It is employed to describe those cases in which a state declines to surrender a person demanded, who is not upon its own physical territory or national waters, upon its diplomatic or consular premises within foreign territory.

At a time when revolutions in democratic states have not as yet become a matter of the past and when in other states the nature of political regimes produces a climate favourable to rebellion and persecution alike, the subject cannot be regarded as obsolete or as restricted to the principle on non-extradition of political offenders. Pan American Convention on Political Asylum concluded in 1928 formed the main subject matter for the above category of offenders.

On the other hand recent developments have not been uniformly applied to the application of the principle of asylum. It is possible that in a world, in which observance of human rights and fundamental freedom have become a reality there will be no room for revolution which purport to indicate the rights of man or, for persecution which assault them.

Although persecution of political refugees is as old as human history, it was considered as transitional and it was not viewed in the context of human rights. It was only after the world war II when refugee problem gained a menacing proportion and 20th century became the century of homeless man. The

fundamental rights of men gained formal recognition leading to the signing of character of U.N. and various conventions.

As no recognised status is provided to political refugees in any state and they have no rights under customary international law, their position is insecure and uncertain as was the case in Bangladesh liberation war 1971 and Hungarian revolution in Oct. 1956. It became necessary to take some measures that would give them the basic rights to which they are entitled as human beings. The granting of asylum to refugees is frequently the cause of political tension between the country of asylum and the country of origin. The flight abroad by citizen of a country exposes that country to the international community as unfree and undemocratic, and as a persecutor and violator of Human rights, more over its image is tarnished at international level. On the other hand, the country of asylum is overburdened with the massive influx of foreigners on its territory especially in cases of third world or developing nations.

Among the various steps taken to check mass influx of Asylee. During the early days league of

Nations in 1921 appointed its first High Commissioner Fridtj Nansen to Supervise the Work in connection with refugees, to define their legal position, organize their employment and to settle their question of repatriation. Nansen office and later the famous Nansen passport did a tremendous job, their Department worked as acting organizer and intermediary.

However it was only after the world war II that status of refugees began to be regulated by treaties and by creating functional agencies for asylum seekers. The latter conventions became wider in scope to cover regularization of their legal status in the country of asylum. The doctrine of human rights which has been troubling and upsetting some, inflaming and thrilling others, whether members of cabinets or diplomats U.N. charter became for some states one of the significant postulates of their foreign policy when blaming or denouncing other country or guiding their action with in international concern of Human right. It is indeed a remarkable event because it gives an insight in the internal affairs of the state, it is meant to tear aside the veil that had in the past covered and protected sovereignty, giving each state the appearance armoured titanic structure. Today several human rights doctrine, force states to give an account of how they administer

justice, run prisons and treat their nationals. Potentially, therefore it can subvert their domestic order and consequently traditional configuration of international community as well.

Refugee malady plagues the human race in an ever increasing degree; masses of men and women and children are streaming across frontier in search of security, liberty and human dignity. States should try to evolve such a society with social justice which can give them peace and human dignity. Voluntary Repatriation should also be encouraged.

Inspite of people being uprooted for long now, there has been an increase awareness among nations regarding refugee prproblem. The crusading work of U.N. for the international protection of refugees and other international organizations, along with an alter world press, many refugees are aware of their rights, their urge to be back home is an in eliniable right. This awareness along with solidarity from concerned international citizenry and invincible human spirit keep alive their desire to live with dignity and honour. Therefore conducive atmosphere must be created in state, then these would be little, if any cause,

for a citizen's flight abroad or failure to return home for fear of persecution.

David Martin in his article the "New Asylum seekers : refugee law in the 1980s" tries to distinguish this decade of asylum seekers from their predecessor. Firstly the old system took for granted certain natural barriers to movement that kept the number of direct asylum seekers tolerably low, which resulted in loosening of tension of humanitarian impulse and immigration. Secondly the old system provided certain guarantees of refugee bonafides which operated without much difficulty and painstaking adjudication of individual claims to refugee status.

Certain strategic options could be applied so as to minimise the asylum number of asylum seekers. Firstly, receiving countries could expand legal protection for the new asylum seekers secondly, they could renovate the system of adjudication so that, it can enforce the existing criteria for protection, effectively and swiftly enough to achieve fair outcomes, avoid unnecessary detention and deter the less compelling illegal migrants. Thirdly they could impose broad based, inevitably crude restrictive policies, such as interdiction at sea, detention or

denial of premission to work, which is designed to deter migration categorically.

Thus, asylum seekers of the present decade are championed by more strong advocacy apparatus, that seems far more influenced and effective than the previous instrument which defended the earlier refugee movements. This apparatus consists of more powerful UNHCR, a growing body of enforceable international human rights law. It has a growing political influence which wilds at humanitarian norms, invokes legal principles and mobilizes public opinion.

Finally, its could be emphasized that the major. Asylum seekers in recent years have been encouraged or even instigated by governments of states of origin as premediated and malicious acts of deliberate policy. Thus, more attention must be paid to enlarge and enforce the legal responsibility of state of origin for asylee inflow. Complete dependence on human rights principles should be avoided and state of origin must have some restrictive guidelines for their states which could include early warning, monitoring of flows of persecuted aliens and compensation claims.

APPENDIX I

APPENDIX - I

HUMAN RIGHTS

Universal Declaration of Human Rights, 1948

(Adopted and proclaimed by General Assembly resolution
217 A (III) of 10 December 1948)

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the formation of freedom justice and peace in the world.

Whereas disregard and contemps for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

Whereas it is essential to promote the development of friendly relations between nations.

Whereas to people of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal

and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did

not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each state.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from nonpolitical crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor deried the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race nationalty r religion have the entitled 'to equal rights as marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government, this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment to just and favourable conditions of work and to protection against employment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of him-

self and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widow' hood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children whether bom in or out of wedioc, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friedship among

all nations, racial or religious, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his

personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

APPENDIX II

APPENDIX - II

Declaration on Territorial Asylum, 1967

Adopted by General Assembly resolution 2312 (XXII) of 14 December 1967.

The General Assembly,

Recalling its resolutions 1839 (XVII) of 19 December 1962, 2100 (XX) of 20 December 1965 and 2203 (XXI) of 16 December 1966 concerning a declaration on the right of asylum,

Considering the work of codification to be undertaken by the International Law Commission in accordance with General Assembly resolution 1400 (XIV) of 21 November 1959,

Adopts the following Declaration :

DECLARATION ON TERRITORIAL ASYLUM

The General Assembly,

Noting that the purposes proclaimed in the Charter of the United Nations are to maintain international peace and security, to develop friendly relations among all nations and to achieve international co-operation in solving international

problems, of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.

Mindful of the Universal Declaration of Human Rights, which declares in article 14 that :

"1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

"2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations",

Recalling also article 13, paragraph 2, of the Universal Declaration of Human Rights, which states :

"Everyone has the right to leave any country, including his own, and to return to his country",

Recognizing that the grant of asylum by a State to persons entitled to invoke article 14 of the Universal Declaration of Human Rights is a peaceful and humanitarian act and that, as such, it cannot be regarded as unfriendly by any other State,

Recommends that, without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons, States should base themselves in their practices relating to territorial asylum on the following principles :

Article 1

1. Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism, shall be respected by all other States.

2. The right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

3. It shall rest with the State granting asylum to evaluate the grounds for the grant of asylum.

Article 2

1. The situation of persons referred to in article 1, paragraph 1, is, without prejudice to the

sovereignty of States and the purposes and principles of the United Nations, of concern to the international community.

2. Where as State finds difficulty in granting or continuing to grant asylum, State individually or jointly or through the United Nations shall consider, in aspirit of international solidarity, appropriate measures to lighten the burden on that State.

Article 3

1. No person referred to in article 1, paragraph 1, shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution.

2. Exception may be made to the foregoing principle only for overriding reasons of national security or in order to safeguard the population, as in the case of a mass influx of persons.

3. Should a State decide in any case that exception to the principle stated in paragraph 1 of this article would be justified, it shall consider the possibility of granting to the persons concerned, under

such conditions as It may deem appropriate, an opportunity, whether by way of provisional asylum or otherwise, of going to another State.

Article 4

State granting asylum shall not permit persons who have received asylum to engage in activities contrary to the purposes and principles of the United Nations.

APPENDIX III

APPENDIX - III

HAVANA CONVENTION ON ASYLUM 1928

"Article 1. It is not permissible for states to grant asylum in legations, warships, military camps, or military aircraft, to persons accused of or condemned for common crimes, or to deserters¹ from the army or navy.

"Persons accused of or condemned for common crimes taking refuge in any of the place mentioned in the preceding paragraph, shall be surrendered upon request of the local government.

"Should said persons take refuge in foreign territory, surrender shall be brought about through extradition, but only in such cases and in the form established by the respective treaties and conventions or by the constitution and laws of the country of refuge.

"Article 2. Asylum granted to political offenders in legations, warships, military camps, or military aircraft, shall be respected to the extent in which allowed, as a right or through humanitarian toleration, by the usages, the conventions, or the laws of the country in which granted and in accordance with the following provisions.

"1. Asylum may not be granted except in urgent cases and for the period of time strictly indispensable for the person who has sought asylum to ensure in some other way his safety.

"2 Immediately upon granting asylum, the diplomatic agent, commander of a warship, or military camp, or aircraft, shall report the fact to the minister of foreign relations of the state of the person who has secured asylum, or to the local administrative authority, if the act occurred outside the capital.

"3. The government of the state may require that the refugee be sent out of the national territory within the shortest time possible; and the diplomatic agent of the country who has granted asylum may in turn require the guaranties necessary for the departure of the refugee with due regard to the inviolability of his person, from the country.

"4. Refugees shall not be landed in any point of the national territory nor in any place too near there to.

"5. While enjoying asylum, refugees shall not be allowed to perform acts contrary to the public peace.

"6. States are under no obligation to defray expenses incurred by checre one granting asylum".

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